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ABSTRACT

This updated version of a 1989 document of the same title represents a guide to the immigrant student's legal right of access to public schools based on the 1982 United States Supreme Court ruling in "Plyler v. Doe." Following an introduction, the first of three sections, "School Practices," addresses everyday school practices by outlining prohibited and recommended practices concerning registration, documentation, verification, relations with the Immigration and Naturalization Service, staff training, the need for regulations and rumor control, along with recommended actions for state and local education agencies. The second section, "The Right of Access," addresses the Plyler ruling itself, and the legal reasoning behind it. The third section, "Parents and Advocates," addresses the role of parents and community members in ensuring that schools abide by and respect Plyler and other educational rights of immigrant students. This section contains supplements on foreign student status and relevant search and seizure legislation written to provide more in-depth legal information. In certain parts of the first two sections, statements of principles address the specific issues at hand, while a later format enables readers to choose the level of analysis they wish to pursue. A table of cases, endnotes, list of contacts, an appendix of sample materials, and a 20-item bibliography are included. (CM)

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Immigrant Students

Their Legal Right of Access to Public Schools

A Guide for Advocates and Educators
by John Willshire Carrera, Esq.

An NCAS Publication

ED 381 588

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Immigrant Students:

Their Legal Right of Access to Public Schools

A Guide for Immigrants, Advocates and Educators

by
John Willshire Carrera, Esq.

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The National Center for Immigrant Students
National Coalition of Advocates for Students
100 Boylston Street, Suite 737
Boston, MA 02116-4610

Phone (617) 357-8507
Fax (617) 357-9549

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Contacts

Should anyone need further information, they are urged to contact:

Richard Gray, Jr., Esq. (617) 357-8507
John Willshire Carrera, Esq.
Vivian Lee
National Coalition of Advocates for Students, 100 Boylston Street, Suite 737
Boston, MA 02116-4610

Fernando Colon, Esq. (713) 639-1918
Thurgood Marshal School of Law
Texas Southern University
3100 Cleburne Avenue
Houston, TX 77004

Norma Cantu, Esq. (512) 224-5476
Guadalupe Luna, Esq.
MALDEF
314 East Commerce Street, Suite 200
San Antonio, TX 78205

Roger Rice, Esq. (617) 628-2226
META, Inc.
240-A Elm Street, Suite 22
Somerville, MA 02144

Len Reiser, Esq. (215)238--6970
Education Law Center
801 Arch Street, Suite 610
Philadelphia, PA 19107

Peter Roos, Esq. (415) 398-1977
Camilo Perez-Bustillo, Esq.
META, Inc.
524 Union Street
San Francisco, CA 94133

Jamal Jbara (718) 729-8866
Advocates for Children of New York
24-16 Bridge Plaza South
Long Island City, NY 11106

Dan Kesselbrenner (617) 227-9727
Gail Pendelton, Esq.
National Immigration Project
National Lawyers Guild, Inc.
14 Beacon Street, Suite 506
Boston, MA 02108

Charles Wheeler, Esq. (213) 487-2531
National Immigration Law Center
1636 West Eighth Street, Suite 205
Los Angeles, CA 90017

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Norma Cantu, Esq., Mexican American Legal Defense and Educational Fund, San Antonio, TX

Fernando Colon, Esq., Thurgood Marshall School of Law, Texas Southern University Houston, TX

Richard Gray, Jr., Esq., National Coalition of Advocates for Students Boston, MA

Adam Green, Esq., Sullivan and Worcester, Boston, MA

Kathy Jarvis, Advocates for Children of New York

Jamal Jbara, Advocates for Children of New York

Nancy Kelly, Esq., Fellow, Human Rights Program, Harvard Law School

Dan Kesselbrenner, National Immigration Project of the National Lawyer's Guild, Inc., Washington, DC

Len Reiser, Esq. Education Law Center, Philadelphia, PA

Vivian Lee, National Center for Immigrant Students, NCAS, Boston

Roger Rice, Esq., META Somerville, MA

Alan Rom, Esq., Lawyers Committee for Civil Rights Under the Law of the Boston Bar Association

Peter Roos, Esq., META San Francisco, CA

Lorey Rosenberg, Esq. American Immigration Law Foundation (AILA), Washington, DC

Frank Sharry, National Immigrant Refugee and Citizenship Forum, Washington, DC

Bill Tamayo, Esq., Asian Law Caucus, San Francisco, CA

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Joan First, Executive Co-Director

Richard Gray Jr. Esq. Executive Co-Director

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Ntsiki Langford
Terry Heide
Uma Roy-Chowdhury

Stan Kaplan, PCs at Your Command, Brookline, MA

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NCAS

The National Coalition of Advocates for Students (NCAS) is a network of experienced child advocacy organizations that work on public school issues at the federal, state and local levels. It is the only national coalition that works full time on these issues.

NCAS member groups have developed, through experience in their own communities, a common perspective about children and schools. They share a commitment to public education, to maximum student access, to appropriate educational experiences, and to state and local advocacy as a constructive approach to school improvement.

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Boston, MA

Multicultural Education Training and Advocacy, Inc. Somerville, MA/
San Francisco, CA

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National Black Child Development Institute, Washington, DC

Parents Union for Public Schools
Philadelphia, PA

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Albany, NY

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Ann Arbor, MI

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D. Pennsylvania Department of Education circular "Child Immigration Status Irrelevant to School Enrollment."

E. Florida Board of Education correspondence regarding use of social security numbers and treatment of ESL Students, and the complaint by Florida Rural Legal Services and META.

Glossary

Preface

In this manual, all persons in the following categories are referred to as immigrants or non-citizens (students or parents), and not as "aliens," as they are legally referred to under immigration law and the Immigration and Nationality Act (INA) of 1952:

* all persons who **were born outside of all 50 U.S. states, Puerto Rico, Virgin Islands, Guam, and outlying possessions of the United States**;

* all persons who have **not claimed their citizenship as a result of being born outside the United States to U.S. citizen parent or parents** (where eligible); and,

* all persons who have **not been naturalized** in the United States.

Although the terms may not be fully interchangeable in all situations, particularly in immigration proceedings, the author of this manual has chosen to use the terms immigrant and non-citizen because they more fully, historically, and fairly define the class of persons involved.

Additionally, in this manual, when necessary, immigrant students and parents are further categorized as documented immigrants or documented non-citizens and undocumented immigrants or undocumented non-citizens. Documented immigrant/documented non-citizen is a catch-all category that includes all non-citizen residents of the U.S. whose presence is known by the Immigration and Naturalization Service (INS) (see Glossary) and who reside here either under a valid immigration status with the permission of the INS, or whose immigration status is presently in the process of being adjudicated.

Undocumented immigrant/undocumented non-citizen is a catch-all category that includes all non-citizen residents of the U.S. whose presence in the U.S. is not known by the INS and who are residing here without legal immigration status and without permission of the INS and whose immigration status is not in the process of being adjudicated.

***Note* Children born in the United States to documented or undocumented immigrant parents are U.S. Citizens.**

Glossary

Alien - As defined by the Immigration and Naturalization Act (INA), any person not a citizen or national of the United States. This manual uses the term "non-citizen" instead of alien.

Amnesty - Also known as "legalization." This is a program whereby certain undocumented non-citizens were granted amnesty by the INS which adjusted their immigration status to that of a temporary resident, and after 18 months, to lawful permanent resident. The general amnesty applicant must have established proof of entry prior to January 1, 1982, and "continuous unlawful residence" since that time. This program is covered by Section 245(A)(c)(5) of INA. A more limited "amnesty" program permitted certain agricultural workers who could establish proof of having resided in the United States and performed agricultural labor for a minimum number of days during the period of 1984 to 1986. This program is covered by Section 210 of the INA.

Asylee - A non-citizen in the United States or at a port of entry whose application for asylum has been adjudicated by the Justice Department and about whom a determination has been made that he or she is "unable or unwilling to return to his or her country of origin because of past persecution or a well-founded fear of persecution, based on the person's race, religion, nationality, membership in a particular social group, or political opinion."

C.F.R. - Code of Federal Regulations. Most immigration regulations are contained in 8 C.F.R.

Chill or Chilling - suppressing, quelling, restraining, hindering.

Citizen - Under the INA, a person who is born in a particular country or who became a naturalized citizen of that country.

Deportation - The formal removal from the United States of a person found to be a deportable "alien" under the INA.

Documented Immigrant/Documented Non-Citizen - A catch-all category which includes a documented non-citizen resident of the United States whose presence is known by the INS and who resides here either under a valid immigration status, with the permission of the INS, or whose immigration status is presently in the process of being adjudicated. More precisely, the INS's knowledge may be actual or constructive and this category includes a non-citizen who either: has been granted permanent, temporary, or conditional legal status; has been granted a legal status enabling her/him to remain in the United States for a fixed or indefinite period of time; has been granted permission under the INA to reside in the United States during the pendency and adjudication of her/his specific application for relief; or who has been given a document or some documents by the INS which indicates that the government is permitting her/him to remain in the United States or that the INS will not deport her/him for the present time.

Documented Non-Immigrant - A non-citizen who has been admitted to the United States temporarily for a specific reason and time and who generally has obtained his or her documents at a U.S. consular office outside the United States. Tourists, students, fiancees of U.S. citizens, and temporary workers are all examples of documented "non-immigrant aliens." A documented non-immigrant will usually have a visa stamp and an "I-94" document (Record of Arrival/Departure) which states his or her appropriate "non-immigrant" designation, the

period of time he or she is allowed to stay, and whether or not he or she is allowed to work. A person who stays beyond the authorized time or violates another condition of the visa can become "out of status" and may be treated by INS as an "undocumented alien" unless he or she can have his or her "non-immigrant" status reinstated. Should his or her immigration status not be extended or reinstated, for school purposes he or she becomes an undocumented immigrant student.

Documented Refugee or Asylee - A non-citizen who fled his or her country because of a "well-founded fear of persecution," or who is a special refugee permitted into the United States under specific federal authority. Refugees are those who apply for admission somewhere outside the United States and are approved on the basis of feared persecution. Refugees are distinguished from asylees in that the latter have entered the United States (with or without inspection) before being granted asylum. A person who is classified by the INS as a refugee generally (but not always) has an "I-94" document which says "refugee." It should be noted that "refugee" is a broad colloquial concept as well as a strict legal category. An individual may identify him or herself as a refugee even if not classified as such by INS.

Green Card - A slang term describing the Alien Registration Receipt Card (Form I-151 or Form I-551). Many versions of these forms are not green in color.

Illegal Alien - A misnomer referring disparagingly to certain non-citizens. This term is a misnomer for two reasons: 1) a person, as an individual, cannot be deemed "illegal" under the U.S. constitution and state constitutions such as that of Massachusetts; 2) under U.S. immigration law, only non-citizens who have failed to leave the United States after their cases have been fully adjudicated (through all levels of appeal) are legally considered to be in the United States in violation of the INA and its amendments.

Immigrant - Colloquial for persons who are not born in the United States and who reside in the U.S. regardless of immigration status. Under immigration law, it generally means a non-citizen who intends to remain permanently or indefinitely in the United States. In fact, under immigration law, all non-citizens are presumed to be immigrants unless they can establish that they do not intend to abandon their residence in another country and otherwise qualify for and are granted a non-immigrant visa. (Non-citizens in the United States with valid non-immigrant visas are documented non-immigrants. See Documented Non-Immigrant above.)

Immigration and Nationality Act of 1952 (INA) - Legislation that defines most immigration status now in use, and forms the basis for U.S. immigration law and policies. It is contained in Title 8 of the United States Code (USC).

Immigration Act of 1990 (IMMACT) - IMMACT 90 is the most comprehensive revision of the INA since 1917 and 1924. Among other things, IMMACT 90: increased the number of permanent visas available each year for both family-sponsored and work-sponsored immigration; reorganized the visa preference system; granted temporary safe haven (TPS) to Salvadorans; created a program of temporary safe haven for persons fleeing their countries of origin under certain circumstances; created the Family Unity Program; substantially revised the grounds for exclusion; shifted the responsibility from Congress to the Executive Branch to decide whether HIV infected persons or persons with AIDS should be barred from entering the U.S.; and brought changes to the administrative naturalization process.

Immigration Reform and Control Act (IRCA) - Legislation passed in 1986 which, among

other things: 1) provided for the legalization of specific groups of non-citizens; 2) prohibited the employment of persons who were not authorized by the Immigration and Naturalization Services to work; and 3) provided for sanctions against employers who hired persons who were not authorized to work.

Immigration Status - The legal status conferred on a non-citizen by the immigration laws.

INS - Immigration and Naturalization Service - is a federal agency within the Department of Justice that enforces and administers the immigration laws. (Other offices and agencies involved in the granting of visas, deportation and exclusion hearings, and the judicial review of decisions in these proceedings include the Executive Office for Immigration Review of the Department of Justice, the Department of State, and the Department of Labor.)

Lawful Permanent Resident - A non-citizen who has been lawfully granted the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws. (See also "Permanent Resident," and "Documented Immigrant/Documented Non-Citizen" definitions.)

Lawful Temporary Resident - Person who was granted status under the first stage of the amnesty and SAW program. LTRs must apply for permanent residence under the second stage of the amnesty program, or be processed for adjustment under the SAW program, or lose their legal status. An LTR who has been granted LPR status may have a TR card with a sticker on the back which indicates that he or she is a Lawful Permanent Resident. This card is temporary evidence of his or her LPR status, and should be kept by the person until the actual 'green card' arrives.

Legal Services - Non profit legal advocacy organizations or services that provide free legal help to low-income and elderly persons who need legal advice or representation in the areas of public benefits, housing, family law, elder issues, and other civil matters. These organizations or services assist non-citizens as well as citizens depending on the availability of resources.

Legalized Immigrant/Legalized Non-Citizen - A non-citizen granted temporary or permanent legal residence under IRCA ("Amnesty" or "Legalization Program") under Sections 210 and 245A of the INA.

Naturalization - The granting of nationality of a state or country upon a person who has been born under allegiance to another nation.

Parolee - A non-citizen who appears to be otherwise inadmissible to the inspecting officer, but is allowed to enter the United States under emergency conditions; or for humanitarian reasons when the non-citizen's entry is determined to be in the public interest. Although parolees are required to leave when the conditions supporting their parole cease to exist, they sometimes may be able to adjust their immigration status to asylee or legal permanent resident.

Permanent Resident - A non-citizen that enters the United States with an immigrant visa, or who has made his or her status permanent after entering. Persons with this status are entitled to live and work in the United States and collect entitlement benefits, if categorically qualified. (See definition for "Lawful Permanent Resident" which is interchangeable with this term. See also the definition for "Documented Immigrant/Documented Non-citizen.")

Persons Residing Under Color of Law (PRUCOL) - Non-citizens who are known to immigration authorities, and who the INS is not planning to immediately deport. PRUCOL is not an official INS immigration status, but rather a status used by the Department of Welfare and the Department of Employment Security as well as certain federal agencies to provide benefits to non-citizens in an acceptable immigration status for purposes of receiving benefits.

Refugee -A non-citizen who fled his/her home country (or if stateless, country in which last habitually resided) because of a "well-founded fear of persecution," or a special refugee permitted into the United States under specific federal authority. A refugee is a person who applies and is approved for admission somewhere outside the United States on the basis of feared persecution. A person who is classified by the INS as a refugee generally (but not always) has an "I-94" document which says "refugee" and can apply for permanent residence after one year. It should be noted that "refugee" is a broad colloquial concept as well as a strict legal category. Many individuals may identify themselves as refugees even if they are not classified as such by INS.

Registry - A form of relief from deportation available to otherwise qualified non-citizens in deportation and exclusion proceedings who can establish, among other things, that they have continuously resided in the United States since January 1, 1972. It is a form of amnesty recognizing that non-citizens who have had such residence have established sufficient ties to the United States to warrant the granting them of lawful permanent residence in the United States. Also available to people who are not in proceedings but want to legalize their status.

S.A.W. Program - Special Agricultural Worker Program - A program created under IRCA that provided undocumented immigrants with Lawful Temporary Resident status who either: resided in the United States and performed agricultural labor for at least 90 days during the one-year period prior to May, 1986; or performed agricultural labor at least 90 days for three consecutive years from May 1, 1983 to May 1, 1986 and who resided in the U.s. for at least six months during each of those years. SAW recipients were adjusted on December 1, 1990 or December 1, 1989 depending on which category they belonged. (See Lawful Temporary Resident.)

Undocumented Immigrant/Undocumented Non-citizen - This is a catch-all category which includes a non-citizen whose present presence in the United States is not known by the INS and who is residing here without legal status, without permission of the INS, and whose immigration status is **not** in the process of being adjudicated. A non-citizen who entered without being inspected by the INS and whose presence has never been discovered by the INS is included in this category, as well as, a non-citizen who was formerly a documented non-immigrant, but is now "out of status."

Some of these immigrants may actually be in the process of seeking lawful status through a pending petition for a permanent visa which is not immediately available. Eventually, many will gain permanent resident status in this country either because of eligibility for some form of relief from deportation (e.g. political asylum, suspension of deportation, adjustment of status through a relationship to a U.S. citizen), a visa petition (e.g. family petition or employment based petition), or because the government will opt not to deport them for humanitarian or other reasons. Others will eventually leave the country either voluntarily or involuntarily. (See Documented Immigrant and documented Non-citizen.)

***Note:* Children born in the United States to undocumented immigrants or undocumented non-citizens are U.S. citizens.**

U.S. Citizen - Under the INA, a person who is either: born in the United States (including continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States); who becomes a citizen through naturalization; or, who is born outside the United States to U.S. citizen parents under qualifying circumstances [derivative citizenship - See also Acquired Citizenship] (and who has not renounced her/his citizenship to the United States).

Visa - An INS document authorizing an non-citizen to enter and remain in the United States for certain periods of time and for certain purposes.

Voluntary Departure - The INS District Director and/or an Immigration Judge may, in their discretion, permit non-citizens in deportation proceedings or "out of status" (with certain exceptions) to depart voluntarily from the United States. A voluntary departure is an alternative to departure under a deportation order. A district director may reinstate or extend period of voluntary departure granted by an Immigration Judge. Under voluntary departure, the non-citizen is **not** banned for reentering the United States at a later date.

Introduction

> Immigrant children bring a wealth of riches to our schools. They come with optimism, energy, and a variety of skills which will make a vital contribution to our nation's future. We will all benefit by the preservation of their strengths which are too often converted into vulnerabilities in the classrooms of our schools.
>
> Justice Cruz Reynoso (Ret.), California State Supreme Court

In 1982, the Supreme Court ruled in Plyler v. Doe*, that public schools were prohibited from denying immigrant students access to a public education from Kindergarten through grade 12 on the basis of their immigration status. More specifically, the Court found that undocumented immigrant children[1] and young adults have the same right to attend free public elementary and secondary schools as their U.S. citizen and permanent resident counterparts. As such, states and the public schools in each state are prohibited from enacting or adopting laws, regulations, or practices which deny or result in the denial of this right.

In addition to their Plyler right of access, under state law, both documented and undocumented immigrant students are obligated, as are all other students, to attend primary and secondary schools until they reach a mandated age. Conversely, states are obligated to enforce these laws with regard to immigrant students, as with U.S. citizens and permanent residents.

As such, public schools and public school personnel are prohibited under Plyler from adopting policies or taking any action to deny or which results in the denial of the right of access to resident immigrant students on the basis of their immigration status, and in particular, undocumented immigrant students on the basis of their undocumented status.

School policy should make it clear to all school personnel that as educators, their primary responsibility is to provide all students who are residents of their community with a quality education. As educators, they should not be involved in any policing activities for Immigration and Naturalization Service (INS) (see Glossary), nor are they under any legal obligation to do so. Schools are in the business of educating students and the INS is in the business of enforcing federal immigration laws.

The need for this affirmative policy was clearly expressed by former New York City Public School Chancellor Nathan Quinones at a public hearing in 1986:

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* 457 U.S. 202 (1982), 102 S. Ct. 2382, 72 L.Ed 786

> We have to give a clear message that we are not arms of enforcing [immigration law]...we are not the enactors of it and we are not the agents of the federal government in carrying it out.

MESSAGE TO THE READER

The following manual has been written to address prohibited and recommend Plyler right of access practices for educators, advocates, and school lawyers. To address their need for different types of information relative to the Plyler right of access for immigrant students, the manual has been both divided into different sections and written, in certain sections, on two different levels.

Chapter I, entitled "School Practices," is written to address everyday school practices. It outlines prohibited and recommended practices. Chapter II, entitled "The Right of Access," is written to address the Plyler right of access itself and the legal reasoning behind it. Chapter III, entitled Parents and Advocates, is written to address the role that parents and community members must play to insure that schools abide by and respect the Plyler rights of immigrant students.

In Chapter I, School Practices; and Chapter II, The Right of Access, two levels of Analysis follow each question. The first *Analysis* includes statements of principles which address the specific issues at hand. This is addressed to the reader who is simply looking for a guide on these issues. However, for the reader who desires or needs to understand the legal reasoning behind the principle, a second *Analysis* is included which presents a legal justification for the stated principle. This format has been adopted to enable readers to choose the level of analysis they wish to pursue.

Supplements 1 and 2 are written to provide more in-depth legal information for readers who desire a deeper understanding of the law as it affects documented non-immigrant students in the U.S. on F-1 and M-1 visas (See Supplement 1 - Foreign Student Status) and the law concerning searches and seizures in this context.

Appendix A, new in the 1992 edition, is a section on Immigrant Student Rights under International law. While some of these international documents have not yet been incorporated into U.S. law through the process of signature, ratification and execution, they represent a valuable resource for advocates, and NCAS urges advocates to begin incorporating the principles represented by these documents into their advocacy efforts.

Appendix B includes regulations, policy statements, advisory opinions, and letters from Departments of Education/School Departments in New York City, Massachusetts, Pennsylvania and California that may serve as models for advocates in other school districts. This appendix also contains a legal complaint in Florida, and related policies and correspondence.

Finally, this manual has been written for the practitioner. Each section has been carefully researched and represents our interpretation of the law in this area.

I. School Practices

> Because of this ruling [Plyler v. Doe], school officials may not require children to prove they are in this country legally, through such evidence as green cards, citizenship papers, etc. They may only require proof that the child lives within the attendance zone of the school, just as they might for any other child. Rent receipts or utility bills showing the home address should constitute adequate proof.
>
> *The Rights of Students: American Civil Liberties Handbook*; Janet Price, Alan H. Levine and Eve Cary; Revised Ed., 1988. Carbondale: Southern Illinois University Press.

> Today, education is perhaps the most important function of state and local governments...[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> Brown v. Board of Education, 347 US 483, 493 (1954).

(Please see Preface to Glossary for clarification of terms including: documented immigrants, documented non-citizens, documented non-immigrants, undocumented immigrants, undocumented non-citizens, and "aliens.")

A. ENTITLEMENT TO EQUAL EDUCATIONAL OPPORTUNITIES

1. Are Immigrant Students Entitled to Equal Educational Opportunity?

Although the Constitution does not expressly provide students with the right to a public education nor has the Supreme Court to date found such a right in the Constitution, the Court has found education to be a semi-fundamental right for undocumented immigrant students. The Supreme Court has also consistently

depicted education as playing a fundamental role in maintaining the fabric of American society and has held that once a state undertakes to provide educational opportunities, these opportunities become a right which must be made available to all students on equal terms.

Analysis

The Constitution does not expressly provide students with a right to a public education, nor has the Court to date found such a right in the Constitution. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35 (1973). It has, however, in Plyler, held education to be a semi-fundamental right in particular situations under the Fourteenth Amendment's Equal Protection Clause.

The Court in Brown v. Board of Education, 347 U.S. 483 (1954) clearly enunciated the principle that all children are entitled to equal educational opportunities. It held that all primary and secondary students have an equal right to all educational opportunities made available by the state. Once a state undertakes to provide educational opportunities, these opportunities become a right which must be made available to all students on equal terms.

The Supreme Court has also held that the Fourteenth Amendment Equal Protection Clause bars state and local governments from denying any person, including students, access to public institutions, such as schools, on the basis of race, national origin, or alienage.

Analysis

The Supreme court has long held that state and local governments are prohibited under the Equal Protection Clause of the Fourteenth Amendment from enacting classifications based on race, Brown v. Board of Education, 475 U.S. 483 (1954), national origin, Korematsu v. United States, 323 U.S. 214 (1944); or alienage, Graham v. Richardson, 403 U.S. 365 (1971), which discriminate, deny benefits, or exclude from participation. Such classifications are deemed inherently suspect and must be tailored to serve compelling governmental interest to be found constitutional. This standard has been described as "strict" in theory and fatal in fact.

B. REGISTRATION, DOCUMENTATION, AND VERIFICATION REQUIREMENTS

1. Which school practices are prohibited?

During initial enrollment and at all other times, schools are prohibited from denying undocumented immigrant students admission on the basis of their undocumented status. Schools are also prohibited from treating undocumented immigrant students disparately for residency determination purposes on the basis of their undocumented status. Finally, because any inquiries about a student's immigration status or requests for documentation which might expose a student's undocumented status will have the effect of chilling (see glossary) their right of access, these inquiries are also in all likelihood prohibited.[2]

Analysis

Prohibited school practices include:

(a) barring access to a student on the basis of his/her undocumented status or his/her alleged undocumented status;

(b) treating a student disparately for residency determination purposes on the basis of his/her undocumented status;

(c) inquiring about a student's immigration status, including requiring documentation of a student's immigration status during initial registration and at any other time for:

- o admission and intake determination purposes;
- o any reason other than admission and intake determination purposes.

(d) making inquiries from a student or his or her parents which may possibly expose the undocumented status of the student or the parents;

(e) requiring Social Security numbers of all students which will have the effect of exposing the immigration status of undocumented immigrant students or their parents. Students without Social Security numbers should be assigned a school-generated number instead.

Under very carefully restricted and monitored situations, an exception may be made when it comes to asking and documenting a student's country of origin.[3]

2. How should a school handle requests for documentation by federal education organizations?

Schools should solicit voluntary information from parents and students or find alternative ways of identifying and documenting the eligibility of students.

Analysis

Schools receiving supplemental federal funding to provide educational services to immigrant students under the following programs:

(a) the Emergency Immigrant Education Program;

(b) SLIAG Funds (Section 204 of IRCA);

(c) the Transitional Program for Refugee Children;

are required to document the eligibility of each student receiving services paid for by these programs. However, schools are not required by the controlling statutes or regulations to check or document the immigration status of each student in the school or of those students who appear to be eligible.

The regulations are very clear in the following areas:

- alien registration numbers are neither required nor solicited;
- documentation of immigration status is neither required nor solicited;
- schools are not required to obtain documentary evidence of the student's eligibility from the student or the child's parent or guardian. The information may be based on credible information from any source, including information contained in previous school records;
- the Emergency Student Program does require documentation of a student's country of origin and the period when the student entered the school for the first time. However, immigration status documents are not required and other types of documents should be used;
- the Transitional Program does require documentation that a student is a refugee as defined by the Refugee Act of 1980, his or her country of origin, and date of arrival. However, immigration status documents are not required and other types of documentation may be provided.

Emergency Immigrant Education Program
(34 CFR Section 581.51 [1987])

How is the eligibility of an immigrant child determined?

Informational basis. (1)

(a) An SEA is not required to obtain documentary evidence of the child's civil status from the child or the child's parent or guardian.

(b) In determining eligibility, an SEA may rely on credible information from any source, including information contained in previous school records and information provided by the child or the child's parent or guardian.

In the past, Schools have occasionally requested information in a manner that was chilling to undocumented immigrant students' right of access. Because of this, schools must be very vigilant, under Plyler, in refraining from requesting information from immigrant students and their parents which will directly or indirectly lead them to fear exposure of their undocumented status and thus lead to the denial of their Plyler right of access to schools.

Schools receiving these funds should adhere to the following guidelines when collecting this information:

- school personnel should be informed of undocumented immigrant students' Plyler rights and the manner in which even unintentional requests for information concerning his/her immigration status, or his/her parents' immigration status or for information which may lead to their exposure as undocumented persons may in fact lead to a chilling of their rights; schools should formalize their understanding of these rights and school personnel's affirmative duty to refrain from activities which breach Plyler;

- school personnel may solicit voluntary written information (such as country of origin and so forth); to ascertain whether a student qualifies for programs. Schools should refrain from asking individual students or their parents to clarify or to document their status, whether they qualify or not; either request would violate undocumented immigrant students' Plyler rights; schools should not require staff to verify these determinations by asking students or parents directly;

- o schools should be vigilant for unintentional attempts to document eligible students which lead to the possible chilling of their Plyler rights;

- o schools should limit information taken for documentation purposes to all but the essentials; schools should not record 'alien registration numbers' or other very specific immigration status information which would force undocumented immigrant students to expose their lack of legal status;

- o schools are prohibited under the Family Educational Rights and Privacy Act (FERPA) and state privacy acts from providing any outside agency, including the Immigration and Naturalization Services, with all such recorded information without getting permission from the student's parents or without a valid warrant; it must be remembered that even the act of requesting such permission from undocumented immigrant parents for release to an outside agency, particularly the INS, will have the effect of chilling the students' Plyler right of access and thus constitute a prohibited practice.

It is recommended that schools address this documentation requirement by informing all parents and students that the school receives funds under these programs and asks that eligible children voluntarily come forward on their own while at the same time guaranteeing privacy of this information.

3. Can schools require social security numbers of students and parents as a prerequisite for admission?

Undocumented immigrant students and undocumented immigrant parents are not eligible for social security numbers. As a result, any school which requires social security numbers as a prerequisite would be denying all undocumented immigrant students the right of access in direct violation of Plyler v. Doe.

Analysis

Undocumented immigrant persons, since they have never been granted employment authorization by INS, are not eligible to be assigned a social security number (See 20 CFR 422.104, 422.105). As a result, an undocumented immigrant student or parent will not be able to comply with any requirement that a student or parent present a social security number or show that he or she has applied for a social security number for school registration purposes, the effect of which would be the violation of the student's Plyler right of access. Any such requirement may also be in violation of the Privacy Act.

4. Can schools require students to apply for social security numbers if they don't already have them?

Schools should refrain from requiring students to apply for social security numbers. Should schools decide to pass out social security registration forms in an attempt to assist the Social Security Administration (SSA), they must inform both students and their parents in appropriate languages that the application forms are being handed out solely as a service to parents who intend to claim their children as dependents for tax purposes. Further, schools should be clear that it is up to the parents and students as to whether the applications are actually filed and that schools will not monitor the filing of these applications.

Analysis

The Tax Reform Act of 1986 requires that in order for a person to be claimed as a dependent for tax purposes--in this case, children who will be the age of five or older by the end of the tax year--they must have a social security number, and the number must be listed in the tax return. In turn, the SSA, in an effort to assist parents who intend to list their children as dependents, has requested that all schools assist in this effort by passing out social security registration forms in schools. Registration for social security numbers has not been made mandatory. It is completely voluntary in this situation.

Schools or school personnel in a number of states, however, have occasionally interpreted this request for assistance as a prerequisite for attendance or a prerequisite for services. In a number of instances, parents have also received the incorrect impression that their children must register.

Since any such requirement or perceived requirement will have the effect of chilling the Plyler rights of all undocumented immigrant students, these practices should be carefully monitored and prohibited where such chilling takes place.

One State's Approach

"As you are aware, the Social Security Administration (SSA) has requested that all schools assist the Federal Government in obtaining Social Security numbers for children claimed as dependents for federal income tax purposes."

> It has come to my attention, however, that some parents are under the impression that children must register with SSA in order to attend public school. That is not the case. The SSA registration process is only to assist parents in later claiming their dependent children on tax returns. It is completely voluntary. This issue has been of particular concern to the parents of undocumented aliens who are afraid that their children will not be allowed to attend school. As I advised in my memo of April 30, 1986, all children are required to attend school in California, regardless of immigration status.
>
> It is therefore advisable to clearly indicate to parents receiving SSA registration forms that registration is voluntary. If registration forms have already gone home, efforts should be made to advise parents that failure to register with SSA will not prevent their children from attending school.
>
> Memorandum of July 30, 1987 to County and District Superintendents, from William Honig, California Superintendent of Public Instruction.

5. Are immigrant students eligible for free lunch and breakfast under the School Lunch Act if the parents and other household members are unable to present social security numbers?

In order to qualify for the Free School Lunch Program, all applicants, including immigrant parents, are required to furnish either of the two following types of information, in addition to household income and names of all household members, on the required application form for each of the household members over the age of 21:[4]

- **social security numbers of all household members over the age of 21, should they have them; and**

- **for any household members above the age of 21 who does not have a social security number, an indication on the application that he or she does not possess one**[5]

Analysis

The applicable federal regulations for the National School Lunch Program state that all household members above the age of 21 must list their social security numbers on the application; or, if they don't have a social security number, they must so indicate:

> 'Documentation' means the completion of the following information on a free and reduced price application:... (3) At the option of the household, either the social security number of the parent or guardian who is the primary wage earner or, if another household member signs the application, the social security number of that household member **or an indication that neither possesses a social security number**... [7 CFR Section 245.2(a-4,3)]
>
> ...Additionally, the application shall require applicants to provide the names of all household members, and either the social security number of the parent or guardian who is the primary wage earner, or, at the household's discretion, the social security number of the adult household member who signs the application. In lieu of a social security number, the household may indicate that neither household member possesses a social security number... [7 CFR Section 245.6(a)(1)]

A third section of the regulations requires the application to include a statement--in cases where the household does not receive food stamps or AFDC--that adult household members who have social security numbers are required to list their social security numbers and that failure to do so will result in a denial of the application. It also states clearly that if they do not have a social security number, they need only indicate that they don't because **social security numbers are NOT mandatory**. It further states that social security numbers are required only for income and other information verification purposes and not to check for legal immigration status:

> (1) Section 9 of the National School Lunch Act requires that, unless your child's food stamp or AFDC case number is provided, you must include a social security number on the application. This may be the social security number of the parent or guardian who is the primary wage earner, the social security number of the adult household member signing the application, or an indication that neither household member possesses a social security number. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that neither the primary wage earner nor the adult household

> member signing the application has one, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. ...[7 CFR Section 245.6(a)(1)]

6. How should a school handle immigration related identification voluntarily submitted by immigrant students or parents?

Should an immigrant parent or student, for whatever reason, voluntarily offer an INS generated document--such as a passport, green card, or I-94--for identification purposes, the school should take special care to refrain from recording:

- **any personal identifying information from the document;**
- **information concerning the type of document submitted;**
- **that an INS generated document was submitted.**

The school should only record that personal identification was presented.

7. How should a school handle any information incorrectly collected?

Should the school, for whatever reason, come across information regarding the immigration status of immigrant students or their parents, it is prohibited under the Family Educational Rights and Privacy Act (FERPA), otherwise known as the Buckley Amendment, and state privacy acts from providing any outside agency, including the Immigration and Naturalization Services, with all such personally identifiable information without first getting permission from the student's parents or a valid court order. Since, however, even the request for permission would have the effect of chilling the immigrant student's Plyler right of access, this too would constitute a prohibited practice.

Analysis

FERPA mandates that schools which receive federal funds are prohibited from disclosing personally identifiable information from the records of its students without first obtaining a written consent of the parents. Although there are exceptions to this requirement, an unsubpoenaed request by INS is not among them:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency or organization, other than to the following... [20 U.S.C. Section 1232g(b)(1)]

For the purposes of FERPA, "personally identifiable information" is defined as:

> ...including but...not limited to: ...data or information [that] includes but is not limited to: (a) the student's name, (b) the name of the student's parent, or other family member; (c) the address of the student, or the student's family; (d) a personal identifier, such as the student's social security number or student number; (e) a list of personal characteristics which would make the student's identity easily traceable: or (f) other information which would make the student's identity easily traceable. [34 CFR. Section 99.3 (1982)]

The disclosure of any information relating to the immigration status of any immigrant student or his or her parents which is attached to other information which would make the student's identity traceable, is prohibited by FERPA. FERPA does allow for the release of personally identifiable information if:

(a) there is written consent from the student's parent specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(b) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency. [20 U.S.C. Section 1232g(b)(2)]

Any such request for consent to release information concerning the status of immigrant students either by the schools or by INS would undoubtedly result in the denial of the effected student's Plyler rights and/or the chilling of the rights of other immigrant students attending the school or school district. Because of this, such requests should be considered prohibited.

Although FERPA allows for the release of 'directory information' from student files without requiring prior parental consent, since the type of information discussed here does not fit into that category, schools must never release it as such. Parents and advocates are advised to monitor schools on this issue. Should a school ever fail to comply with FERPA, the Act itself provides a mechanism to ensure compliance. Such

action under FERPA includes withholding federal funds to a school should a voluntary means of securing compliance be ineffective.

C. RELATIONSHIP BETWEEN SCHOOLS AND THE INS

1. Are communications with INS which have been initiated by school personnel concerning specific students allowable?

Any communication to INS initiated by a school or school official concerning a specific student should be prohibited. The communication may: (1) unconstitutionally deny an undocumented immigrant student his or her Plyler right of access; (2) chill the right of access of other undocumented immigrant students in the school district; and (3) result in exposing the undocumented immigrant student and his or her family to INS deportation. Any such communication, without the uncoerced consent of a student's parents, will also result in a violation of FERPA.

> **School personnel should refer immigrant students and parents with questions about their immigration status to legal service organizations, immigrant rights organizations, or local immigration attorneys. Above all, they should refrain from advising immigrants to go directly to INS offices without first getting proper advice from a lawyer or immigrant rights advocate.**

2. How should schools handle requests for information by INS?

(A) School personnel should be prohibited from cooperating with INS in any manner that jeopardizes or could very possibly jeopardize immigrant students' Plyler right of access. Because of this, any request by INS for information concerning specific students or to determine if undocumented immigrant students are attending a school or a school district should be carefully documented and communicated to the school principal, with the exception of the administration of F-1 and J-1 visas (See Supplement 1).

The principal should, in turn, deny the request and inform the INS that such information can only be released upon the presentation of a valid subpoena. Compliance with such requests will very possibly result in denying some or all immigrant students in a school or school system their right of access under Plyler and their rights under FERPA and the applicable state privacy act. It may also

expose the students and their families to the INS resulting in their deportation. These practices should be incorporated into formal school policy and frequently communicated to all school personnel.

Analysis

Such communication may: (1) have the effect of unconstitutionally chilling or even denying undocumented immigrant students' their Plyler right of access; (2) chill the right of access of other undocumented immigrant students in the school district; and (3) result in exposing the immigrant students and their families to INS deportation. Any such communication, without the uncoerced consent of an immigrant student's parents may also result in a violation of FERPA.

Any cooperation between a school and the INS--with the exception of the administration of F-1 and J-1 visas (see Supplement 1)--or any surveillance and policing activities conducted by INS in or near schools, has the effect of chilling the undocumented immigrant student's right of access to an education and should therefore be prohibited.

(B) If the school is subpoenaed by the INS to produce information on immigrant students for the above stated reasons, the principal should be immediately informed of the subpoena and he or she should immediately contact an attorney--i.e. school attorney, state department of education legal department, town counsel, city law department, immigrant rights or civil rights attorney.

Only upon advice of an attorney should the principal comply with the subpoena. Should the requested information be submitted without properly checking into the validity of the subpoena and without carefully taking into consideration the rights of the immigrant students and their parents, the school and the principal will be exposing themselves to risk. If the principal refuses to comply, he or she and the school may have to go to court. At this point, however, a lawyer may be able to negotiate a settlement that would be less disruptive to immigrant students, their parents and the school. The INS should not be able to penalize the school and the principal for the delay.

Analysis

For the reasons listed above, school personnel should be prohibited from producing subpoenaed information on immigrant students for INS without first getting competent legal advice. To do otherwise, will, aside from jeopardizing the immigrant students and their Plyler rights, expose school personnel and the school to liability for their actions.

3. How should schools handle requests by INS to enter a school to search for information or seize students?

School personnel should be prohibited from cooperating with INS in any manner that jeopardizes or could very possibly jeopardize immigrant students and their Plyler right of access. As a result, any request by INS for consent to enter a school to search for information or to seize students should be immediately conveyed to the school principal. The school principal should meet the INS officials in the front office with a credible witness present, deny the INS officials consent, and request to see a legal warrant.

(A) Should the INS official not be carrying a warrant, the principal should inform the officer that unless INS presents the school with a legal search or arrest warrant, INS will not be allowed into the school. The INS official may push to be admitted without a warrant. The principal must be firm. Unless the principal insists, he or she will give up one of the strongest safeguards for protection of the school and the immigrant student. The principal should then immediately contact a lawyer--i.e. school attorney, immigrant rights or civil rights attorney--and document the encounter.

(B) Should the INS official be carrying a warrant, the principal should ask to see it and inspect it very carefully. If the warrant is for search and/or seizure of students, it should at the very least:

- **list the school by its correct name and address;**
- **list students by name;**
- **be signed by a judge or magistrate;**
- **be less than ten days old;**
- **be served by an INS officer with proper identification.**

To protect other immigrant students in the school and their Plyler rights, upon being convinced of the validity of the warrant, the principal should bring the INS officials to his/her office, and request that they remain there while the named students are brought to them. The principal should immediately inform the school superintendent of the request and contact an attorney--i.e. school attorney, immigrant rights or civil rights attorney--for legal advice. At the same time, the principal should ask that the named children, and only those named, be located and asked to wait in a safe room while legal advice is being solicited. Only upon the advice of an attorney, who determines whether the warrant appears to be legally valid on its face and properly served, should the principal then turn the students over to the INS.

If the warrant is for search and/or seizure of information, it should at the very least:

- **list the school by its correct name and address;**
- **state with particularity the places to be searched;**
- **state with particularity the items to be seized;**
- **be signed by a judge or magistrate;**
- **be less than ten days old; and**
- **be served by an INS officer with proper identification.**

To protect other immigrant students in the school and their Plyler rights, upon being convinced of the validity of the warrant, the principal should bring the INS officials to his/her office. The principal should then immediately inform the school superintendent of the request and contact an attorney for legal advice. Only upon the advice of an attorney, who determines whether the warrant appears to be legally valid on its face and properly served, should the principal allow the INS officials to search for the items listed.

If at all possible, to prevent the INS officers from walking through the school, for the safety of all immigrant students, the principal should request that the items being sought be brought to them. However, should the INS officers have to walk through the school, the principal and a witness should accompany them at all times. The principal and the witness should also carefully document all proceedings, such as the questions asked by the INS officers, the areas that are searched, the items that are seized, and the time involved.

If the warrant is a warrant to seize students and does not state that INS can also search the school, then INS has no right to walk around the school "inspecting" it or searching through records.

These practices should be incorporated into formal school policy and frequently communicated to all school personnel.

Analysis

The intrusion on undocumented immigrant students' Fourth Amendment interests would be considerable in any of these situations. As students, undocumented immigrant students are covered by the Fourth Amendment when attending school. As students, undocumented immigrant students share all the same expectations of privacy experienced by all other students in a school. As immigrant students, because the Court has ruled that they have a semi-fundamental right of access to public education which can be denied or chilled by any cooperation between a school and the INS--with the exception of the administration of F-1 and J-1 visas (see Supplement 1)--undocumented immigrant students have a considerably higher expectation of privacy than do other students.

Finally, as undocumented immigrant students, given that neither they nor their parents would allow them to go to school if they felt that there was any real possibility of them being detected and/or apprehended by INS, both they and their parents have, in total, a much higher expectation of privacy than do other students attending the same schools.

The legitimate governmental interests would be minimal in any of these situations. Undocumented immigrant students, as undocumented students, do not pose any threats or problems to the schools' need to maintain security. If anything, immigrant students have much to contribute to their fellow classmates in the form of multicultural awareness and the need to aspire and do well in their school work.

Undocumented immigrant students, as undocumented students, have a semi-fundamental right to be in schools and thus are not congregating illegally, breaking any federal or state criminal laws, nor violating any legitimate school rules. Undocumented immigrant students, as immigrant students, do not pose any legitimate threat to the government or to Americans as a whole. Finally, given that students reside in the community, attend school over a period of time, and are normally dependent on their parents, INS will for the most part be able to locate them after school hours and in other locations. Undocumented immigrant students can be contacted in other settings which will not entail a violation of their Plyler rights.

As a result, a balancing of the intrusion upon the Fourth Amendment interests of undocumented immigrant students against the legitimate governmental interests involved in any searches and seizures of undocumented immigrant students in school settings clearly weighs on the side of immigrant students entitling them to the highest protection against unreasonable search and seizures provided by the Constitution.

> INS is the only federal agency with legal authority to search for and seize foreign born persons who have violated or are suspected of having violated U.S. immigration laws. No other federal, state, or local authorities have been empowered to search for and seize foreign born persons solely on the basis of their immigration status. Other policing agencies may only search and seize foreign born persons on suspected violation of U.S. immigration law grounds if they have first searched or seized them on suspicion of or for having committed other crimes.
>
> Therefore, any search or seizure of immigrant students in public schools, for violations or alleged violations of U.S. immigration law, conducted by police forces other than INS may very well be illegal from the very beginning solely because it is conducted by persons without authority to do so.

The Legal Rights of The Undocumented Immigrant
by
Center for Immigrant Rights, Inc.

It is recommended that information be posted so that undocumented immigrant students be informed of their rights should they be arrested. These rights include:

- the right to speak with an attorney before answering any questions by police, federal agents, or immigration agents;
- the right to refuse to answer any questions regarding nationality or place of residence; the undocumented immigrant can give his or her name for facilitating identification by a family member or a friend;
- the right to refuse to sign any documents without first speaking with an attorney;
- the right to retract any document signed by the immigrant without an attorney;
- the right to contact a lawyer or agency who will represent him or her free of charge if he or she cannot afford to pay a private attorney; the INS must give the detainee a list of free legal services;
- the right to receive, in writing, the charges against him or her within 24 hours after arrest; the written form should also include the amount of bail, which should not be excessive;
- if detained, the immigrant has a right to call a lawyer, family members, or friends;
- if the detainee is in a detention center, he or she has the right to humane conditions, food, water, medical attention, bathrooms, showers, and other personal care;
- the right to appeal a deportation order to a higher court;
- the immigrant has the right to apply for political asylum; in order to qualify for political asylum there must be a fear of persecution if returned to the native country; this persecution must be for the reasons of race, religion, or membership in a social or political group.

D. DAY TO DAY PRACTICES

1. Overview

The fear of discovery and deportation has a very profound impact on the daily lives of undocumented immigrant students. Their psychology is described in a paper prepared by the Intercultural Development Research Association of San Antonio, Texas:

> An illegal immigrant child will be afraid of authority, of being 'discovered,' and shoulders an enormous responsibility not to jeopardize the residency status of his family and parents. This fear is expressed in a reluctance to interact with school officials, to receive recognition, or to 'get into trouble' and call unwarranted attention to himself which may lead to discovery of his illegal residency status. Such fear can poison teacher-student relationships. Teachers may feel the immigrant child is not 'trying' or comes from a family that is not interested.
>
> Teachers of immigrant children have also expressed the regret that this fear prevents the child from getting close to peers and teachers, even when both want to establish closer relationships.

The impact of this fear is also described in *Crossing the Schoolhouse Border: Immigrant Students and the California Public Schools*, a report issued by California Tomorrow:

> For children, being here illegally brings increased instability, fear and insecurity to their lives. It also means living without protections, social services and assistance available to most people in this country. We found high correlations between undocumented status and dropping out or never enrolling in school, with interference with schoolwork, as well as with physical and mental health problems. Also, undocumented children are more likely than other immigrants to move frequently, hampering their attachment and achievement in school.

On top of this very real fear, undocumented immigrant students also face the barriers all immigrant students face as they settle into their communities and attend U.S. school on a day to day basis, as described in *New Voices: Immigrant Students in U.S. Public Schools*, a report by the National Coalition of Advocates for Students:

> Immigrant students need years to learn a new language and make difficult adjustments; but most U.S. schools are not structured to provide this time. Immigrant students are more likely to be retained in-grade, inappropriately placed in special education, and are at double risk for being placed in low academic tracks on the basis of language limitations or slow academic progress. The cumulative effects of these experiences often causes immigrant students to leave school early, and creates great emotional stress.

Many of these children bring to the schools serious physical and mental health problems. Among the latter are grief, depression, loneliness, despair, and alienation. Because entire families have shared the same traumas of war, violence, severe poverty, perilous journeys, and difficult adjustments in this country, whole families may present the same symptoms.

While the majority of immigrant parents greatly value schooling, many do not know how to cross the wide chasms of language, culture and class differences which separate them from the schools.

It is imperative that schools adopt practices that not only refrain from denying immigrant students access to schools but also actively engender confidence and trust on the part of the undocumented and documented immigrant students and their parents. School principals and other school personnel should be:

- committed to the enforcement of the Plyler right of access on a day to day level;
- committed to establishing an atmosphere that is open and welcoming to all immigrant students that is free of fear from the INS and free of victimization, harassment, and intergroup conflict;
- willing to provide comprehensive culturally and linguistically appropriate counseling and guidance services;
- committed to insuring that immigrant students have equal access to educational opportunity by providing appropriate educational assessment and placement;
- committed to ensuring that immigrant students have a fair opportunity at school success by restructuring those policies, structures, and practices which impede access to effective instruction or sort them into programs which prepare them for inferior futures;
- committed to empowering immigrant students and communities by respecting native languages and cultures and supporting their retention when that is the community's preference;
- committed to developing qualified bilingual teachers and retraining the present teaching force to have the skills and sensitivities necessary to successfully teach foreign born students;
- committed to developing a strong working relationship with immigrant parents.

Note The National Center for Immigrant Students of NCAS and other immigrant advocacy organizations should be consulted concerning information and support in implementing these practices.

2. Staff Training

In order to insure that school personnel become sufficiently aware of the background and special needs of immigrant students, schools should provide systematic and on-going staff training that addresses these issues:

- o the history of immigration into the U.S. and the surrounding communities;
- o the background of the present immigrant communities in the school district, including their reasons for immigrating to the U.S. and their cultural background;
- o the implications of being undocumented and an immigrant in the United States, particularly for groups who are fleeing persecution;
- o the right of access to public schools under Plyler v Doe;
- o the right to a quality and equitable education that each LEP (Limited-English-Proficient) student is entitled to under federal and state law, regardless of his country of origin or legal status;
- o the role each staff person plays in creating a safe, friendly, and productive environment for each immigrant student;
- o the importance of being an advocate for immigrant students;
- o school policy as it specifically pertains to issues affecting immigrant students such as: how to handle requests for information by INS, how to handle warrantless requests to search and seize students by INS, how to handle requests to search and seize covered by warrants by INS, and how to handle referrals on immigration issues;
- o the importance of reaching out to immigrant parents.

Schools should provide special and more comprehensive training to guidance counselors and front line staff on the educational and legal rights of immigrants and the benefits and services available for them under the law.

Note The National Center for Immigrant Students of NCAS and other immigrant advocacy organizations should be consulted concerning information and support in implementing these practices.

3. The Need for Regulations

To systematically effectuate the goals outlined above, schools should officially promulgate regulations that make adherence to Plyler official school policy and mandate systematic school personnel staff training.

4. The Need to Quash Rumors

Any procedures or situations which, in the eyes of the undocumented immigrant students and their parents, threaten to expose them to the INS will have the effect of chilling the undocumented immigrant students' right of access to an education and should therefore be prohibited. Because undocumented immigrant students and parents live in constant fear of being discovered and often don't have access to proper authorities to verify rumors about threatening procedures or situations, it is imperative that schools act affirmatively to quash unfounded rumors.

These measures should be taken in a timely and culturally sensitive manner. Root sources of unfounded rumors should be quickly ascertained. This information and assurances by the principal that the school is aware of Plyler rights and has taken appropriate measures to protect their rights should be quickly conveyed to immigrant students and parents by a trusted community liaison in appropriate languages. Failure to act in this affirmative fashion may well lead to the chilling of Plyler rights.

E. RECOMMENDED ACTIONS FOR STATE AND LOCAL EDUCATION AGENCIES

In a recent study, *New Voices: Immigrant Students in U.S. Public Schools*, the National Coalition of Advocates for Students (NCAS) found that fear of detection and deportation is a major barrier to schooling for undocumented immigrant students. The report also documents the denial of access to a public education for young immigrants arrested by the INS and detained while awaiting adjudication of their cases.

The NCAS Report Recommends that state and local education agencies:

- o insure that all agency and school personnel receive staff training in the areas described in Section D above;
- o adopt policies which prohibit the U.S. Immigration and Naturalization Service, or any other agency, from entering schools or collaborating with school in ways which infringe upon the legal rights of immigrant children or cause children and families to mistrust the school and school personnel;
- o prepare and distribute native language materials for immigrant families explaining their rights and school procedures for enrollment, including the fact that it is illegal for school personnel to request information about legal status;
- o establish an atmosphere within schools that is open and welcoming to immigrant students and their families by providing them with environments free of victimization, harassment, and intergroup conflict;
- o develop curriculum, school practices, and a multicultural staff which will promote the success of immigrant students;
- o actively encourage the involvement of immigrant parents, community based self-help organizations, and advocates in school policy development.

II. The Right of Access

A. WHAT IS THE PLYLER V. DOE RIGHT OF ACCESS?

The Plyler right of access provides all undocumented immigrant students residing in any part of this country with the same right of access to a public education for Kindergarten through grade 12 that is provided under state and federal law to all U.S. citizen and permanent resident students. More specifically, under the Fourteenth Amendment's Equal Protection Clause, states and public schools are barred from denying undocumented immigrant students their right of access to public schools on the basis of their legal status. In essence, the Supreme Court has held their right of access to be a semi-fundamental right which can only be violated if the state can show that the disparate treatment promotes a substantial state interest.

Analysis

In 1982, the Supreme Court ruled in Plyler v. Doe, 457 U.S. 202 (1982), that states and public schools are prohibited under the Equal Protection Clause of the Fourteenth Amendment from taking actions which treat undocumented immigrant students disparately solely on the basis of their immigration status if the treatment does not promote a substantial state interest.

More precisely, the Court held: (1) undocumented immigrants (aliens) are covered by the Equal Protection Clause of the Fourteenth Amendment; and, (2) state statutes which withhold from local school districts any state funds for the education of children who are not "legally admitted" into the U.S., and which authorize local school districts to deny free enrollment in their schools to children who are not "legally admitted" to the U.S. are in violation of the Equal Protection Clause of the Fourteenth Amendment.

The Court, in upholding their right of access, applied an intermediate level of review. It elevated undocumented immigrant students to a semi-suspect class and found the right to schooling in this context to be a semi-fundamental right, making the right of access for undocumented immigrant students a semi-fundamental right.

Any practice or requirement by public schools, their staffs, or other parties which may possibly expose the undocumented status of the student or create a reasonable

fear of being exposed to INS, has the effect of chilling their right of access to schools and as such is quite likely in violation of Plyler. The school's duty must include: the duty to refrain from such discriminatory activities; the duty to affirmatively "quash" rumors or misinformation; and the affirmative duty to actively inform school personnel, communities, and parents of these rights and the ensuing protection these rights create for undocumented communities.

> If the State is to deny a discrete group of innocent [undocumented] children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. (Plyler, 457 U.S. at 230).

> [T]he Court [in Plyler],...ruled that undocumented immigrant students and all other immigrant students had a quasi-fundamental right to access public schools. The Court recognized that '[d]enying education to undocumented children imposes a lifetime hardship on a discrete class of children.' (Plyler at 223). Further, it noted that '[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.' [Brown v. Board of Education, 347 U.S. 483, 493 (1954)] Withholding education has been likened to 'penalizing these children for their presence within the United States,' a circumstance over which they generally have no control. (Plyler, 457 U.S. at 220) (Holguin, 1987 at 22).

B. WHICH STUDENTS ARE COVERED BY THE PLYLER RIGHT OF ACCESS?

All immigrant students residing in the United States are covered directly or indirectly by the Plyler right of access. Any active attempts to distinguish between documented and undocumented immigrant students by itself may well constitute a violation of some student's Plyler rights, resulting in an unconstitutional practice.

(1) Undocumented Immigrant Students

All foreign born students residing in the United States without legal immigration status who would otherwise be eligible to attend their local public schools are explicitly covered by Plyler and thus guaranteed a Plyler right of access. This group includes all age appropriate students residing in the U.S. who:

- entered the U.S. without being inspected by INS and who remain here without valid immigration papers; or

- were inspected at the border, entered with a valid visa, and who have since fallen out of status.

(2) Documented Immigrant Students[6]

All foreign born students residing in the United States with legal immigration status, who would otherwise be eligible to attend their local public schools, appear to be similarly covered by the Plyler right of access. These students are also covered by the Fourteenth Amendment, and, all too often, are similarly situated. Additionally, as they have been deemed "persons" covered by the Fourteenth Amendment, they are entitled to the same level of access and protection received by other citizen or permanent resident students in U.S. public schools. (See Supplement 1.)

Schools do not have an obligation to issue I-20s for foreign born students. Therefore, immigrant students do not have a right to have I-20s issued on their behalf by public schools in the U.S. Should a school district, however, decide to grant residency to any student here on an F-1 or J-1 visa, it should act consistently with all other similarly situated students. (See Supplement 1.)

(3) Documented and Undocumented Immigrant Students

For the Plyler right of access to be fully and properly enforced as to undocumented immigrant students, it must be enforced and adhered to for all immigrants.

Educators should remember that only the Immigration and Naturalization Service has been given the responsibility of enforcing U.S. immigration laws--not the public schools or its personnel.

Analysis

Given that it is generally impossible to distinguish between (1) documented and undocumented immigrant students and (2) immigrant and native born students without probing into their immigration status or nationality, it is evident that for schools to refrain from violating or chilling the Plyler rights of undocumented immigrant students, they have to view and treat all immigrant students in the same manner.

C. DO DOCUMENTED AND UNDOCUMENTED IMMIGRANT STUDENTS HAVE A DUTY TO ATTEND SCHOOL?

Immigrant students, as all other students, are obligated under state laws to attend school until they reach a state mandated age. Again, the right to attend school continues even when the state obligation ends.

> State mandatory attendance laws generally make acts perpetrated by persons other than the students which prevent students from attending school illegal and punishable by civil or even criminal penalties. Although, these statutes are generally aimed at parents and other family members who keep their children out of school, they may also be applicable to school personnel who, through their own volition, keep immigrant students from attending school.

D. ARE DOCUMENTED AND UNDOCUMENTED IMMIGRANT STUDENTS BOUND BY CONSTITUTIONAL RESIDENCY REQUIREMENTS?

(1) Immigrant students entitled to a right of access to public schools are bound by the same residency requirements--assuming they are constitutional--imposed on all citizen and permanent resident students in the state in which they reside. State residency requirements are constitutional if they are properly defined, uniformly applied, and developed to further a substantial state interest. As such, residency laws should not be applied in a manner which discriminates against immigrant students.

Analysis

> Immigrant Students, as all other students, are bound by constitutional residency requirements of the state in which they reside. Of course, a school district may require that illegal alien children, like any other children, actually reside in the school district before admitting them to the schools. A requirement of de facto residency, uniformly applied, would not violate any principle of equal protection. (Powell, J., concurring) Plyler 457 U.S. at 227, note 22 (1982).
>
> [Martinez v. Bynum, 461 U.S 321, 328 (1983)].

Under constitutional state residency requirements, all school-age students, including immigrant students, must be deemed as residents if they or their parent or legal guardian live in the district with a bona fide intention of remaining there. The 'intention to remain' does not imply an intention never to leave. Given the mobility of people and families in this country, changing a place of residence is commonplace.

The Supreme Court, in Martinez v. Bynum, 461 U.S. 321 (1983), defined constitutional residency requirements as follows:

> A bone fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement with respect to attendance in public free schools does not violate the Equal Protection Clause of the Fourteenth Amendment. It does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents. [Martinez v. Bynum 461 U.S. at 328-329 (1983)].

The Court, in Plyler v. Doe, 457 U.S. 202 (1982), further noted that such policies must be uniformly applied in order to be bona fide. States are prohibited from accomplishing what would otherwise be prohibited under the Equal Protection clause or the Supremacy Clause by defining a disfavored group as nonresident.

(2) Under Plyler, the distinction between undocumented immigrants, on the one hand, and documented immigrants and United States citizens, on the other, do not constitute a bona fide residency requirement.

Analysis

A state may not, however, accomplish what would otherwise be prohibited by the Equal Protection Clause, merely by defining a disfavored group as nonresident. [Plyler v. Doe 457 U.S. 202, 227 n. 22 (1982)].

E. CAN NON-CITIZEN STUDENTS ON NON-IMMIGRANT VISAS BE PRECLUDED FROM ESTABLISHING RESIDENCY IN A SCHOOL DISTRICT RESULTING IN THE DENIAL OF THEIR RIGHT OF ACCESS?

(1) Schools are prohibited from imposing on immigrants additional burdens which have not been contemplated by Congress. Under the Constitution, they must also treat all similarly-situated non-immigrants in a similar manner.

Analysis

The Supreme Court has long held that state and local governments are prohibited under the Equal Protection Clause of the Fourteenth Amendment from enacting classifications based on race, Brown v. Board of Education, 347 U.S. 483 (1954), national origin, Korematsu v. United States, 323 U.S. 214 (1944), or alienage, Graham v. Richardson, 403 U.S. 365 (1971), which discriminate, deny benefits, or exclude from participation. Such classifications are deemed inherently suspect and require a compelling state interest precisely tailored to serve compelling governmental interest to be found constitutional. This standard has been described as 'strict' in theory and 'fatal' in fact. (Gunther, 1972).

It has long been determined that the federal government has almost exclusive plenary power over immigration. Under the Supremacy Clause, states are generally preempted from adopting practices and regulations which discriminate against immigrants (aliens). States and public schools are, for the most part, prohibited from implementing policies and practices which discriminate against documented foreign students.

They may, it appears, in very limited situations, implement regulations that discriminate against documented non-immigrant students (aliens lawfully admitted) if the regulations do not impose additional burdens not contemplated by Congress. Toll v. Moreno, 458 U.S. 1 (1982). In Toll v. Moreno, where the Supreme Court invalidated a state university's denial of in-state tuition benefits for non-immigrant students, the Court held that any state regulations not congressionally sanctioned that discriminate against aliens lawfully admitted were preempted if they imposed additional burdens not contemplated by Congress. Id. at 2983. The Court in Plyler also held that states have little if any power to classify immigrants (aliens).

> The States enjoy no power with respect to the classification of aliens. See Hines v. Davidowitz 312 U.S. 52 (1941). This power is 'committed to the political branches of the Federal Government.' Mathews v. Diaz, 426 U.S. 67, 81 (1976). Although it is 'a routine and normally legitimate part' of the business of the Federal Government to classify on the basis of alien status, id., at 85, and to 'take into account the character of the relationship between the alien and this country,' Id. at 80, only rarely are such matters relevant to legislation by a State. See Id. at 84-85; Nyquist v. Mauclet 432 U.S. 1, 7, n. 8 (1977). (Plyler, 457 U.S.at 225).

(2) All non-citizen students residing here as dependents of parents or guardians who are here on non-immigrant visas have the same right of access to a free primary and secondary public education as that enjoyed by citizens and documented and undocumented immigrant students. All students residing here in the U.S. on B-2, F-2, J-2., and K-2 visas, have this same right of access.

> School personnel should refrain from making inquiries of a student and his or her parents concerning their immigration status, including whether they are legally in the U.S. on any of the above visas, because it may expose the undocumented status of students or parents (see III.B).

(3) Non-Citizen students here on F-1 and J-1 visas can be precluded from establishing residency in a school district. Should a school district decide, however, to grant residency to any student here on an F-1 or J-1 visa, it must treat them in a manner consistent with its treatment of all other similarly situated students (see Supplement 1). Finally, the school attendance of immigrant students may be mandated by the state truancy and mandatory attendance laws.

Analysis

A lower court in Pena v. Board of Educ. of City of Atlanta, 620 F. Supp. 293 (N.D.Ga. 1985) ruled that the Fourteenth Amendment Equal Protection Clause was violated when the plaintiff, a local school district, required that tuition be paid for public school admission of the children of certain non-immigrant parents, including F-1 students, but not for all non-immigrant parents, such as diplomats or journalists, or for U.S. citizens whose residency in the school district was also for a temporary purpose such as attending a university. The court held that the school district failed to establish a compelling state interest and that the residency requirement was not a bona fide residency requirement.

III. Parents and Advocates

> Active parental involvement in schools--through roles such as teacher's aides, creators or coordinators of extracurricular activities, and participants in policy decisions--helps insure a culturally sensitive academic and social school program. Their participation reduces children's experience of the distance between home and school and sends a message to children that the school staff and program are important. When educators engage minority parents as partners in their children's education, they develop a sense of efficacy which is communicated to their children with positive academic results.
>
> Comer, 1984; Cummins, 1986, *New Voices: Immigrant Students in U.S. Public Schools* (1988) p. 73.

> The Project found, all too often, that ...(community) organizations--aside from individual efforts by parents, friends, and school personnel--are the only groups actively involved in the day-to-day struggle of dealing with the needs of immigrant students. ... Community organizations can be powerful allies for assisting schools to meet the multi-faced needs of immigrant students and families. Working directly with families, staff of community agencies are often able to develop trusting and productive relationships with immigrant parents, who themselves are often very active within these organizations.
>
> *New Voices: Immigrant Students in U.S. Public Schools* (1988) p. 80.

A key element in the safeguarding of Plyler and other educational rights is the development of a constituency who will actively monitor school practices and advocate on behalf of immigrant students. Immigrant parents, community-based immigrant self-help organizations, refugee resettlement organizations, child advocates, and immigrant rights advocates all need to work together to form such a constituency. These efforts will not only benefit immigrant students, but other vulnerable students as well. Further, the act of organizing, learning about schools, and advocating on behalf of these students will contribute to the empowerment of all communities involved.

It is therefore recommended that:

- o immigrant parents and community based self-help organizations familiarize themselves with school issues and with effective advocacy strategies;
- o state and local education advocacy and immigrant rights advocacy organizations familiarize themselves with the unique problems that immigrant students face in schools;
- o all organizations document school practices as they affect immigrant students, particularly instances when their rights are violated; the documented violations should be reported to other advocates, state department of education civil rights offices, local community based organizations, and immigrant rights advocates.

It is further recommended that the following projects and activities be developed as part of the advocacy work described above:

- o institute, or cause schools to institute, a two pronged 'Know Your Rights Campaign' geared to affirmatively inform both immigrant communities and school personnel of Plyler rights, of prohibited and chilling school practices, and of state mandatory attendance laws;
- o document local school assessment practices;
- o inquire into the types of information kept on each student and monitor the manner in which local schools safeguard such information to ensure compliance with FERPA and the applicable state privacy acts;
- o document instances where schools have infringed upon or chilled immigrant student's Plyler access rights;
- o document instances where immigrant students have been harassed or discriminated against by other students or school personnel;
- o communicate documented violations to appropriate authorities and advocate networks;
- o develop local networks and plug into state and national networks of advocates working on these and other school issues;
- o advocate locally for schools to be made "safe and secure" learning environments for immigrant students by making it clear to local policymakers and educators that harassment and victimization of students by adults or other children is not acceptable.

Now that the legalization period under the 1986 Immigration Reform and Control Act (IRCA) has come to an end and INS is increasing its enforcement activities, NCAS urges particular vigilance on behalf of immigrant students and their Plyler rights.

Supplement 1

Foreign Student Status

Preface

For the purposes of this supplement, all non-citizen students present in the U.S. on non-immigrant visas,* are referred to as non-immigrant students.** The term "non-immigrant" is used here as it is in the Immigration and Nationality Act.***

Brief Overview

(I) Under the Immigration and Nationality Act, non-citizen/non-immigrant elementary or secondary students may only request and receive I-20A-B's and I-20M-N's from schools which have received prior approval from INS for attendance of non-immigrant students (non-citizen students here on F-1 and M-1 visas) [See 8 CFR Section 214.3, 8 CFR 214.2(f) and Section 8 CFR 214.2(m)].****

(II) It is strongly urged that a public school or a public school system refrain from

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* Including B-1 (Temporary visitor for business), B-2 (Temporary visitor for pleasure), F-1 (Student attending academic institution), F-2 (Spouse or child of F-1 student), K-1 (Fiancee or fiance of U.S. citizen), J-1 (Exchange alien [in the U.S. for teaching, research, or study under specially designated programs like the Fulbright Scholar program]), J-2 (Spouse or child of exchange alien), K-2 (Child of fiancee or fiance of U.S. citizen), M-1 (Student in established vocational or other recognized non-academic institution) and M-2 (Spouse or child of M-1 student) visas.

** Also referred to as documented non-immigrant students in manual.

*** 8 U.S.C. 1101 et seq.

**** F-1 and M-1 visas are visas issued to non-citizen non-immigrant students by the INS or Department of State giving them permission to enter the U.S. and remain in the U.S. temporarily in order to complete a specific program of study at the educational institution that has accepted and matriculated them and, as a result, issued them INS forms I-20-A-B or I-20-N.

seeking approval for attendance of non-immigrant students (on F-1 and M-1 visas) here on F-1 and M-1 visas) [authority to issue form I-20A-B's[7] and I-20M-N's] unless the school or school system can guarantee that the procedures, safeguards, and administrative mechanism put in place to issue I-20A-B's and I-20M-N's and to comply with the administrative and record keeping duties mandated by the regulations and by signed agreement with INS, will in no way violate or chill each and every immigrant student's Plyler right of access.

(III) Elementary and secondary schools which have been granted approval from INS for the attendance of non-immigrant students (on F-1 and M-1 visas) are responsible to INS solely for the specific non-immigrant students: (1) for whom the school has issued I-20A-B's; and (2) who have been granted permission by INS to study at that specific school. As such, an approved school is under no obligation to INS to keep records on any of the other students. Taken together, Plyler, FERPA, and state privacy laws prohibit the monitoring, reporting, and policing of any of the other students for INS (see Sections II and III). A formal relationship with INS created for the purposes of receiving authorization for the attendance of non-immigrant students does not make the school an extension of the INS, nor deputize school personnel as INS enforcement agents [(see 8 CFR Section 214.3(g)].

(IV) Elementary and secondary schools granted approval by INS for attendance of non-immigrant students are under no obligation by INS, and are prohibited by FERPA, from providing INS with confidential* (other than directory types of information as defined by FERPA) information on each of their approved F-1 and M-1 students in the course of reporting requirements (see National Association for Foreign Student Affairs, *Advisor's Manual of Federal Regulations Affecting Foreign Students and Scholars*).

(V) Non-citizen minor children and spouses accompanying non-immigrant students in the U.S. on F-1 and M-1 visas are here on F-2 or M-2 visas. As immediate family accompanying a F-1 or M-1 holder, they do not qualify for an F-1 or M-1 visa. Given that:

(a) non-immigrant students on F-2 and M-2 visas can legally attend schools in the U.S. without receiving permission from INS to attend any specific primary or secondary school (see 8 CFR Section 214.2(f)(1),(3) and (5) (1992));

(b) elementary and secondary schools (1) can only be authorized by INS to issue I-20A-B's and I-20M-N's for students seeking F-1 and M-1 visas and (2) are only responsible to INS for students who have been granted F-1 and M-1 visas to study in their specific school or schools (based, in part, on the I-20A-B's that they specifically issued to these specific students)(see 8 CFR 214.3 (1988));

(c) schools are prohibited under Plyler from inquiring into the

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* See Section I.B.7 for further discussion of FERPA.

> immigration status of immigrant students or adopting practices which may chill their right of access;

schools should refrain from denying access to F-2 and M-2 visa holders who otherwise would qualify as residents[8] of the school district and should refrain from inquiring about an immigrant student's F-1 or M-1 visa unless the school issued them the I-20A-B or I-20M-N forms upon which the INS granted them a visa to study at a specific school.

(VI) Once a public school or school system has been approved for attendance by non-immigrant students on F-1 and M-1 visas and the school or school system begins issuing I-20A-B and I-20M-N forms, under the Fourteenth Amendment, it should treat all qualified non-immigrant students in an equal and nondiscriminatory manner:

> Any alienage classification which imposes a greater burden upon aliens than Congress intended is invalid, and cannot be asserted as a compelling state interest, or even as a rationale for the classification. Mathews v. Diaz, 426 U.S. at 84, 96 S.Ct. at 1893; Toll v. Moreno, 485 U.S. 1, 102 S.Ct. 2977, 73 L.Ed. 2d 563 (1982). As the Court noted in Mathews, the constitutional scheme of this country commits relations between the United States and aliens within its borders to the political branch of the federal government. 426 U.S. at 81, 96 S.Ct. at 1892. Therefore, it is beyond the authority of the states to attempt to regulate the conditions of entry and residence of aliens. Id. at 84, 96 S.Ct. at 1893. [Pena v. Board of Education of City of Atlanta, 620 F. Supp. 293, 299 (N.D. Ga. 1985). (Federal District Court case involving children of F-1, and other non-immigrant visa holders.)]

Supplement 2:

Overview of Relevant Search and Seizure Law

(I) In a Public School Context:

(A) Submitting to Questioning by Police in a Public School

Immigrant students are covered by the Fifth Amendment* and as such have a constitutional right to remain silent when being questioned by policemen. Immigrant parents have given custody of their children to the school authorities during the time in which they are in attendance solely for the purposes of providing them with a quality education. As such, schools should never assume that they have the authority to make students available for such purposes which may, in all likelihood, have the effect of denying students their constitutional rights, both under the Fifth (Right to Remain Silent) and the Fourteenth (Equal Protection - Plyler v. Doe) Amendments.

> Neither school officials nor anybody else can make students talk to the police. You have a constitutional right to remain silent. The practice in some schools is for school officials to cooperate with police investigations by taking students from class and making them available for questioning. In New York, the State Education Department has warned school boards 'That children are given over to the custody of the school authorities for one purpose only and that is education in all its phases.' Therefore, 'police authorities have no power to interview children in the school building or to use the school

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* The Fifth Amendment (Due Process) states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

> facilities in connection with police-department work, and the board has no right to make children available for such purposes.' Police who wish to speak to a student must take the matter up directly with the student's parents. (ACLU, *Students' Rights Handbook*, pp. 75, 76).

(B) Searches in Public Schools

"The Supreme Court has ruled that Fourth Amendment* protections against unreasonable searches and seizures apply to school searches of "a child's person or a closed purse or other bag carried on [the] person..."

> I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. [New Jersey v. T.L.O. 469 U.S. 325, 353-354 (1985). (Justice Brennan, with whom Justice Marshall joins, concurring in part and dissenting in part.)]

The Court has also ruled that the "legality of a school search turns upon "[its] reasonableness, under all the circumstances," requiring an "accommodation of the privacy interests of school-children with the substantial need...to maintain order in the schools..."[9] And that "generally,...a search does not require a warrant and will be lawful if (a) there is "at its inception...reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" and (b) it is "permissible in its scope."[10] Additionally, a search will be permissible in its scope when measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction. A state court has since also found a student's locker is subject to constitutional protection.[11]

> [T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of a search requires a two fold inquiry: first, one must consider 'whether the ...action was justified at its inception,' (Terry v. Ohio 392 U.S. 1, 20 (1968); second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place, 'Ibid. Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is

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* The Fourth Amendment (Search and Seizure) states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

> violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. (New Jersey v. T.L.O., *supra*, at 339-340.)

(II) In an Immigration Law Enforcement Context:

(A) Responsibility For Enforcement of Immigration Laws

The power to regulate immigration into the United States is exclusively a federal power. The Department of Justice has historically placed that responsibility with the Immigration and Naturalization Service. As such, state and local police forces should refrain from taking on the responsibility of enforcing immigration laws, unless a suspect has been arrested for a non-immigration criminal violation.[12]

(B) Searches and Seizures in General

INS searches and seizures are covered by the Fourth Amendment to the Constitution.

> We agree that, in light of Almeida-Sanchez v. United States, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973), the applicability of the Warrant Clause of the fourth amendment to INS enforcement activities can no longer be doubted. [Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211, 1217 (1981)].
>
> However, the INS has no discretion with which to violate constitutional rights. LaDuke, 762 F.2d at 1325. (International Molders, 799 F.2d at 552).

The Fourth Amendment prohibits "unreasonable searches and seizures" and sets forth the necessary requirements for a valid warrant:

> The Fourth Amendment prohibits 'unreasonable searches and seizures,' requiring that 'no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.'(U.S. Const. Amend. IV) The warrant procedure contemplates that the necessity for every intrusion upon the privacy of an individual first be considered by a 'neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.' [Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948)] This prior consideration must be more than pro forma: '[T]he magistrate must judge the reasonableness of every warrant in light of the circumstances of the particular case, carefully considering the description of the evidence sought, the situation of the premises, and the position and interests

> of the owner or occupant.' Zucher v. Stanford Daily, 436 U.S. at 570, 98 S.Ct. at 1983 (Powell, J., concurring) (Blackie's, 659 F.2d at 1217).

The Supreme Court has held that the probable cause standard to be applied in each type of case should be determined by balancing the intrusion of the individual's Fourth Amendment privacy interests against the legitimate state interest being pursued. Martinez v. Fuerte, 428 U.S. 543, 96 S.Ct. 3074 (1976).

> Since Marshall, the Court has reiterated its conviction that 'the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interest against its promotion of legitimate governmental interests. Delaware v. Prouse, 440 U.S. 648, 654, 99 S.C. 1391, 1396, 59 L.Ed.2d 660 (1979)' (Blackie's, 659 F.2d at 1224).

Neither the Supreme Court, nor any other courts for that matter, have defined the probable cause standard to be applied during a search or seizure conducted by the INS in a public school context. However, it is quite clear that the probable cause standard would have to be considerably higher than that applied in a 'factory raid' context[13] given that: under Plyler v. Doe, the Supreme Court has ruled that each undocumented immigrant student has a semi-fundamental right of access to public schools; any such raid would almost certainly have the affect of chilling the Plyler right of access of all other undocumented immigrant students in that particular school, in the school district, and other undocumented immigrant students in the region (perhaps even in the nation); undocumented immigrant students and their parents have a very high expectation of privacy given that the Supreme Court has held that undocumented immigrant students have a Plyler semi-fundamental right of access; and finally that residing in this country without legal status, by itself, is not a violation of either federal or state criminal laws, but of federal immigration laws which are civil in nature.

Table of Cases

Almeida-Sanchez v. United States, 413 U.S. 266, 93 S.Ct. 2535 (1973).

Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211 (1981).

Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686 (1954).

Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391 660 (1979).

De Canas v. Bica, 424 U.S. 351, 96 S.Ct. 933 (1976).

Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 (1971).

Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399 (1941).

International Molders & Allied Workers' Local U. v. Nelson, 799 F.2d 547 (9th Cir. 1986).

Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367 (1948).

Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193 (1944).

Laticia A. v. Board of Regents of University of California, (Alameda Superior Ct. of CA, No. 588982-4982-4[6/19/85], Modified, 5/19/92).

Martinez v. Bynum, 461 U.S. 321, 103 S.Ct. 1838 (1983).

Mathews v. Diaz, 426 U.S. 67, 96 S. Ct. 1883 (1976).

New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733 (1985).

Nyquist v. Mauclet, 432 U.S. 1, 97 S.Ct. 2120 (1977).

Pena v. Board of Educ. of City of Atlanta, 620 F. Supp. 293 (N.D.Ga. 1985).

People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988).

Perez-Funez v. District Director, 619 F. Supp. 656 (C.D. Cal. 1985).

Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982).

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973).

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968).

Toll v. Moreno, 458 U.S. 1, 102 S.Ct. 2977 (1982).

Zucher v. Stanford Daily, 436 U.S. 547, 98 S.Ct. 1970 (1978).

Bibliography

Advocates for Children of New York, Inc., *Immigrant Children: Challenges and Opportunities for Our Schools*, 1989, Long Island City, NY.

ASPIRA, *Making the Most of Your Child's Education*, (1991) Volumes 1, 2, 3., Washington, DC.

Center for Law and Education, *Training and Resource Materials on Primary Level Education Programs prepared for IMPROVING CLIENTS' LIVES THROUGH EDUCATION ADVOCACY*, 1989. Center For Law And Education, Cambridge, MA.

Center For Immigrants Rights, *The Legal Rights of The Undocumented Immigrant*, New York, NY.

Chang, *Newcomer Programs: Innovative Efforts to meet the Educational Challenges of Immigrant Students*, 1990, California Tomorrow, San Francisco, CA.

First, Kellogg, Willshire Carrera, Lewis and Almeida, *New Voices; Immigrant Students in U.S. Public Schools*, 1988. National Coalition of Advocates for Students, Boston, MA.

Gunther, *The Supreme Court, 1971 Term - Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 1972. 86 Harv. L. Rev. 1, 8.

Holguin, "Children in INS Prisons: An Educational Assessment," 1979. A paper commissioned by NCAS's Immigrant Student Project, Boston, MA.

Intercultural Research Development Association (IDRA), *Education of Undocumented Students in Texas: A Status Report*, 1979, San Antonio, TX.

Multicultural Education Training and Advocacy, Inc. (META), (a videotape), *Nuestros Hijos: Nuestro Futuro: Los Derechos Educativos de Alumnos LEP.*, 1992, San Francisco, CA.

Multicultural Education and Advocacy, Inc. (META), *A Handbook for Immigrant Parents: Protect the Educational Rights of Your Children.*, 1991, San Francisco, CA.

Multicultural Education Training and Advocacy, Inc. (META), *The Rights of Limited English Proficient Students: A handbook for Parents and Community Activists*, 1991, San Francisco, CA.

National Association for Foreign Student Affairs, *Advisor's Manual of Federal Regulations Affecting Foreign Students and Scholars*, Washington, DC..

National Coalition of Advocates for Students, *Meeting the Challenge: How Communities and Schools Can Improve Education for Immigrant Students*, 1993, Boston, MA.

National Immigration Law Center, *Guide to Alien Eligibility for Federal Programs*, Los Angeles, CA

Olsen and Chen, *Crossing the Schoolhouse Border: Immigrant Students and the California Public Schools*, 1988. California Tomorrow, San Francisco, CA.

Olsen and Dowell, *Bridges: Promising Programs for the Education of Immigrant Children*, 1989, California Tomorrow, San Francisco, CA.

Price, Levine and Cary, *The Rights of Students: The Basic ACLU Guide to a Student's Rights*, Revised Ed., 1988. American Civil Liberties Union, Carbondale: Southern Illinois University Press.

Willshire Carrera, *Educating Undocumented Children: A Review of Practices and Policies*, Sept. 1989. ERIC Clearinghouse on Rural education and Small Schools.

Willshire Carrera, "New Law Grants Temporary Protection to Salvadorans," 1991. Article in the New Voices Newsletter, Vol.1, No.1, Spring 1991. National Coalition of Advocates for Students, Boston, MA.

Endnotes

1. Undocumented students, for our purposes, are students (K-12) who reside in the United States without legal immigration status. That is, students who entered the U.S. without being inspected by INS and remain here without valid immigration papers or students who entered with a valid visa and have since fallen out of status. Foreign born students who are here on foreign non-immigrant student visas (F-1, J-1) or who are here with valid non-immigrant visas and who intend to remain here temporarily on foreign student visas are not included.

2. See Box on state mandatory attendance laws, P. 28, for possible liability.

3. In *New Voices: Immigrant Students in U.S. Public Schools* (1988), NCAS documented the lack of comprehensible data on immigrant students for monitoring, planning, teaching and advocacy purposes. In the same report, NCAS recommended that schools immediately begin collecting such data.

   The collection of this data, however, needs to be very strictly restricted to data which is pedagogically useful and which does not infringe on the rights of immigrant students or their parents. In the case of immigrant students, this involves limiting the collection of such data to that which does not risk the chilling of their Plyler rights.

   Requiring that a student, for example, state his country of origin, may justifiably create a fear of being exposed as an undocumented immigrant. If, however, the school: a) limits its collection of such chilling information solely to country of origin; b) develops proper procedures that insure that this information is used solely for pedagogical purposes, and that parents and students are carefully informed of the need for the information and guaranteed that it will be solely used for pedagogical purposes; c) strictly adheres to its obligations under FERPA and applicable state privacy legislation; and d) strictly monitors and enforces such procedures, the risk of collecting this information may be minimized and thus justifiable.

   [This writer is strongly recommends that any decision to collect this information only be made after consulting with immigrant parents and immigrant rights advocates.]

4. Unless application is for a member of a food stamp household or an AFDC assistance unit.

5. "Child Nutrition Programs

   Program Description. Four federal programs provide free and reduced-price meals to eligible children at schools, child care centers, and summer programs. They are the School Lunch or School Breakfast programs, Child Care Food program, and the Summer Food Service program.

Application Procedures. Parents should receive an application for the school breakfast or school lunch program ... Though the application form asks for the Social Security number of all adult household members, if they do not have one they can simply write "none" in response to the question."

Charles Wheeler, "Alien Eligibility For Public Benefits: Part I," *Immigration Briefings*, Federal Publications, No. 88-11 November 1988, page 18.

6. Documented students include those residing in here in the U.S.:

a) "under color of law,"
b) as permanent residents,
c) as naturalized citizens,
d) as asylees,
e) under voluntary departure,
f) as parolees,
g) on non-immigrant visas.

7. Under Sections 1101(a)(15)(F)(i) and/or 1101(a)(15)(M)(i) of the Act.

8. (F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each non-immigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him.

I.N.A. 1101(a)(15)(F)(i)

9. Center for Law and Education, *Training and Resource Materials on Primary Level Education Programs prepared for IMPROVING CLIENTS' LIVES THROUGH EDUCATION ADVOCACY.* p. 340, January, 1989.

10. Center for Law and Education, *Training and Resource Materials on Primary Level Education Programs prepared for IMPROVING CLIENTS' LIVES THROUGH EDUCATION ADVOCACY.* p.338, January, 1989.

11. People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988).

12. In a policy statement issued in 1978, the U.S. Justice Department made the following announcement:

> Attorney General Griffin B. Bell today reaffirmed the Department of Justice policy that the responsibility for enforcement of the immigration laws rests with the Immigration and Naturalization Service and not with state and local police. INS officers are uniquely prepared for this law enforcement responsibility because of their special training and because of the

complexities and fine distinctions of immigration law, Mr. Bell said.

The Attorney General stated that the Department would continue to urge state and local police forces to observe the following guidelines:

1. Do not stop and question, detain, arrest or place "an immigration hold" on any persons not suspected of crimes, solely on the grounds that they may be deportable aliens;

2. Upon arresting an individual for a non-immigration criminal violation notify the Service immediately if it is suspected that the person may be an undocumented alien so that the Service may respond appropriately;

INS officials will continue to work with state and local law enforcement officials to carry out this policy.

Justice Department - Announcement of Attorney General Bell Policy Statement (Sept, 1978)

(Excerpts of this announcement are included for policy analysis purposes.)

13. Two Circuit Courts, the District of Columbia Circuit Court and the 9th Circuit Court, have held that the probable cause standard in INS policing cases involving searches and seizures in businesses is lower than that in criminal cases and higher than in administrative search cases. It was defined as sufficient specificity and reliability to prevent the exercise of unbridled discretion by the law enforcement officials.

The Court in Blackie's, while accepting a hybrid probable cause standard for INS entry warrants, emphasized the need for "sufficient safeguards to assure that nothing impermissible would be left to the discretion of the INS agents." 659 F.2d at 1226. International Molders & Allied Workers' Local U. v. Nelson 799 F.2d 547, 552 (9th Cir. 1986)

This is one of "those situations in which the balance of interest precludes insistence upon 'some quantum of individualized suspicion,'" at least as to the persons sought. Delaware v. Prouse. Blackie's 659 F.2d at 1225.

The D.C. Circuit Court outlined the following restrictions which they ruled made the warrant in that case valid:

The warrant was duly restricted to the location in which there was cause to believe aliens could be found: "the premises located at 22nd and M Streets, North West, Washington, D.C." (App. at 40) It was also restricted as to the time within which the warrant could be executed, providing that execution must occur within 10 days of the order and during the daylight hours.

> Furthermore, the INS was restricted as to how it could act once inside the premises. A search could only be conducted where aliens were likely to be hiding. Thus, the INS was proscribed from searching the files or books of Blackie's, and it is uncontroverted that they searched only those areas in which aliens were likely to be found. No private property of Blackie's within the premises was searched or seized.
>
> Nor did the warrant leave impermissible discretion in the hands of the INS agents with respect to the persons sought to be questioned. The Affidavits filed along with the application for search warrant suggested that numerous persons working in non-public areas of the restaurant were possibly illegal aliens, and gave credible reasons for the affiants' suspicions as well. ...Our view as to the propriety of this warrant is also influenced by the significant amount of supporting evidence that accompanied the application for warrant. These included one affidavit summarizing two separate day-long surveillances of Blackie's, and a lengthy affidavit from an anonymous informant who claimed to have worked at Blackie's. ...three independent sources of information... the rule is that the balancing of the public against private interests is a matter which can be inferred from the particular provisions of the warrant as a whole, and which goes into the calculus of "reasonableness" vel non. Blackie's 659 F.2d at 1226-1227.

The 9th Circuit, upon adopting the D.C. Circuit's analysis, further ruled that the warrant did not have to identify the suspects by name but only had to narrow down the field of potentially vulnerable persons to those employees whom the INS might reasonably believe to be aliens.

> The requirement to "identify the suspect(s) by name" or to provide "enough specific identifying information to assure that the search for that person is reasonably likely to result in finding that person" imposes an unreasonable and impractical burden on the INS. We agree with the District of Columbia Circuit that "warrants and accompanying affidavits [that] narrow down the fold of potentially vulnerable persons to those employees whom INS agents might reasonably believe to be aliens," 659 F.2d at 1226, satisfy the requirements of the Fourth Amendment even where the targeted persons are not identified by name. International Molders' 799 F.2d at 553. 1986)

The 9th Circuit stated that to hold INS warrants to a higher probable cause standard would be to leave INS free to only combat isolated instances of illegal immigration and powerless to combat the much more serious problem of illegal alien employee congregations at central places of business.

> The effect of the court's rule, then, is highly ironic; it leaves the INS free to combat isolated instances of illegal immigration and powerless to combat the much more serious problem of illegal alien employee congregations at one central place, such as a restaurant. Blackie's 659 F2d at 1225.

Appendix A

IMMIGRANT STUDENTS' RIGHTS UNDER INTERNATIONAL LAW
(CITATIONS TO A GROWING BODY OF LAW)

While some of the international documents have not yet been incorporated into U.S. law through the process of signature, ratification and execution, they provide a valuable resource for advocates. It is important that advocates begin to incorporate the principles represented by these documents into their advocacy efforts, and that they work for both the recognition of these instruments in a domestic context and their incorporation into U.S. statutory law.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, UNGA Resolution 217 A(3) (ICC), U.N. Doc. A/810, October 12, 1948.

ARTICLE 2

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ARTICLE 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, Annex 2, UNGA Resolution 2200 (XXI), U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/16316 (1966), (opened for signature Dec. 19, 1966, art. 28 933 U.N.T.S. [entered into force Jan. 3, 1976]). (Signed and Ratified by the U.S.)

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on a ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ARTICLE 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to process and practice their religion, or to use their own language.

U.N. CONVENTION ON RIGHTS OF THE CHILD, U.N. Doc. A/Res./44/25 (1989)(opened for signature Jan. 26, 1990, A/RES./44/25)

ARTICLE 28

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) make primary education compulsory and available free to all:

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information guidance available and accessible to all children;

(e) Take measure to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

ARTICLE 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

ARTICLE 30

In those States in which ethnic, religious or linguistic minorities or person of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her religion, or to use his or her own language.

ARTICLE 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural an artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

OTHER SOURCES INCLUDE:

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Annex 2, UNGA Resolution 2200 (XXX), 21 U.S. GAOR Supp., (No. 16) at 49, U.N. Doc A/6316 (1966)(opened for signature Dec. 19, 1966, art. 50, 999 U.N.T.S. 171 [entered into force March 23, 1976]).

See particularly Article 3, 13,

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN (O.A.S. Res. XXX, adopted by the Ninth International Conference of American States, Bogota, 1948.)

See particularly Article II, XII, XIII

AMERICAN CONVENTION ON HUMAN RIGHTS, opened signature No. 22, 1969, art. 28, 1144 U.N.T.S. 123 (entered into force July 18, 1978)

Appendix B

The attached information are copies correspondence, memoranda and policies regarding the rights of Immigrant Students, and a legal complaint on the handling of ESL students.

Sample Materials

A. New York City Chancellor's Regulations regarding immigrant students including letters to immigrant parents in seven languages. (Used with permission of Board of Education of New York City and Advocates for Children, Long Island City, NY.)

B. Department of Education, Massachusetts Correspondence including copies of NCAS's *School Opening Alert* regarding Plyler rights of immigrant students. (Used with permission of Office of Education, Department of Equal Education, Commonwealth of Massachusetts.)

C. California Superintendent of Public Schools Memorandum

D. Pennsylvania Department of Education circular "Child Immigration Status Irrelevant to School Enrollment."

E. Florida Board of Education correspondence regarding use of social security numbers and treatment of ESL Students, and the complaint by Florida Rural Legal Services and META. (Used with permission of Multicultural Education Training and Advocacy, Inc. (META), Somerville, MA.)

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

NEW YORK CITY

DR. RICHARD R. GREEN
CHANCELLOR

CHANCELLOR'S REGULATIONS, STUDENTS VOLUME - UPDATE NO. 4, 1988-1989

January 9, 1989

TO: COMMUNITY SCHOOL BOARD PRESIDENTS, ALL SUPERINTENDENTS, EXECUTIVE DIRECTORS, HEADS OF OFFICES AND PRINCIPALS OF ALL DAY SCHOOLS

FROM: Richard R. Green

SUBJECT: Immigrant Students, Documented and Undocumented - A-145

Enclosed is a revision of the Chancellor's Regulation, Students Volume, A-145. Please place this new regulation in your copy of the Students Volume.

The following table will aid you in substituting new pages:

SUBJECT	Regulation Number	New Page Numbers	Date Issued	Substitute For Old Pages	Issued
Immigrant Students, Documented and Undocumented	A-145	1 thru 4	1/9/89	1	10/1/79

RRG:cms
Attachment

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

Category: STUDENTS

No.: A-145

Subject: Immigrant Students, Documented and Undocumented

Page: 1 of 4

Issued: 1/9/89

ABSTRACT

This Regulation supersedes Chancellor's Regulation A-145 (Admission of Alien and Foreign-Born Students, dated October 1, 1979), and reinforces the policy that the monitoring of the immigration status of a child or parent is not a proper function of the New York City Board of Education. It also provides guidelines that will help schools develop a coordinated school plan to address the needs of our growing immigrant population.

All children are to be admitted to New York City Public schools, without regard to their immigration status or the immigration status of their parents, provided that they have met all requirements of Chancellor's Regulation A-110 and/or A-120.

Reference to a child's or parent's immigration status is not to appear on any school forms and/or records.

INTRODUCTION

On November 6, 1986, the President signed into law the Simpson-Rodino legislation entitled the Immigration Reform and Control Act (IRCA). This act allows certain undocumented aliens to acquire legal status (amnesty), provided specified requirements are met. The law also contains employer sanctions and employment-related anti-discrimination provisions which affect documented and undocumented immigrants as well as U.S. citizens. Although there was amnesty, great numbers of persons have not applied and/or do not qualify.

New York City has a tremendous and growing number of immigrants, documented and undocumented. They bring to our city their energy, vitality, ambition, and cultural and linguistic diversity. However, immigrant children often experience unique difficulties that can affect their ability to succeed: culture shock, language barrier, unfamiliarity with the New York City school system, grief over separation of family, stress related to immigration status, etc.

In addition to these difficulties, there are ramifications of the Immigration Reform and Control Act on family life that will impact on our schools. Among them are:

1. confusion about medical care and services available for undocumented children and their families resulting in their not availing themselves of services or in institutions wrongfully denying services.

2. difficulties of adolescents in obtaining required documentation, in seeking employment, or participating in work study and other educational programs, e.g., School to Employment Program, Cooperative Education, Summer Youth Employment Program.

3. employment-related discrimination resulting in students and their families having difficulties obtaining and maintaining employment.

4. employment-related abuses of undocumented families resulting in increased stress for the student and family.

The Board of Education has a responsibility to provide the necessary support services to enable these students to have a positive educational experience. Toward that end:

1. Each superintendent is asked to assign a designee on immigrant affairs. The designee will:

   - act as liaison with principals in matters related to immigrant students, both documented and undocumented.
   - coordinate district wide efforts.
   - monitor school based plans.
   - provide district wide staff development.

2. Each principal should designate one person to act as liaison on immigrant affairs to the superintendent's office. The designee will:

   - work with school committees (e.g. CSIP) to ensure that the needs of these students are met.
   - serve as an ombudsperson to immigrant students and their families.
   - facilitate the implementation of strategies to ease the transition of immigrant children.
   - work with admissions and guidance staff to initiate intervention services.
   - serve as a resource for other staff and the community.
   - attend citywide training on immigration law, resources and multicultural issues.
   - monitor program progress

3. Schools with immigrant students must ensure that the needs of these students are reflected in all school based planning, including:

   - identifying appropriate support services, resources and referral mechanisms and ensure the dissemination of this information to students and parents in the students' home language.
   - providing for parental involvement.
   - establishing linkages with community based organizations that have experience in the delivery of immigration services.

Regulation of the Chancellor

Category: STUDENTS

No.: A-145

Subject: Immigrant Students, Documented and Undocumented

Issued: 1/9/89

Questions related to this Regulation should be referred to the appropriate office listed below:

Director
Office of Guidance and Student Development
362 Schermerhorn Street
Brooklyn, NY 11217

Tel. (718) 935-4121

Director
Office of Access and Compliance
Division of High Schools
110 Livingston Street
Brooklyn, NY 11201

Tel. (718) 935-3415

Director
Office of Bilingual Education
131 Livingston Street
Brooklyn, NY 11201

Tel. (718) 935-3891

Administrator
Office of Alternative Services
Division of Special Education
110 Livingston Street
Brooklyn, NY 11201

Tel. (718) 935-3578

Deputy Director
Office of Adult and Continuing Education
347 Baltic Street
Brooklyn, NY 11201

Tel. (718) 935-4369

CHANCELLOR'S MEMORANDUM NO. 46 , 1987-88 June 14 , 1988

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF THE CHANCELLOR

FEB 10 19[illegible]

TO: COMMUNITY SCHOOL BOARD PRESIDENTS, ALL SUPERINTENDENTS EXECUTIVE DIRECTORS AND HEADS OF OFFICES, AND PRINCIPALS OF ALL DAY SCHOOLS

FROM: Richard R. Green
Chancellor

SUBJECT: Admission to School of Immigrant Students

Introduction

The May, 1988 deadline for applying for legalization under the Immigration Reform and Control Act has passed. Many questions exist regarding its impact. However, please be aware that the new law will not change the rights of undocumented students to free public education. The 1982 U.S. Supreme Court ruling in Plyler v. Doe that students have the right to public education without regard to the immigration status of the student or the parent still stands.

Guidelines

All students seeking entrance into the public schools are to be admitted provided all requirements of Chancellor's Regulations A-110 (Admission to Prekindergarten, Kindergarten and First Grade, August 16, 1983) and/or A-120 (Admission to High School, March 18, 1982) are met. The immigration status of the student or parent will not be a criterion for admission.

Chancellor's Regulation A-145 (Admission of Alien and Foreign-born Students, October 1, 1979) clarifies the rights of alien and foreign born students to a public education. The Regulation states that "the monitoring of the immigration status of a child or parent is not the proper function of the New York City Board of Education." In that context, any questions from outside agencies regarding these students should be referred to the Office of Legal Affairs, (718) 935-3636. Schools are directed to continue to apply Chancellor's Regulation No. A-820 (Student Records: Access and Disclosure, November 1, 1979) to comply with requests for personal information about specific children.

Attached is an open letter, in several languages, to parents regarding their children's right to free public education. It is requested that every effort be made to disseminate the letter to all parents. Translations in other languages may be requested from the Office of Bilingual Education, (718) 935-3891.

Thank you for your assistance in this matter. Any questions regarding this memorandum, requirements for admission to school, or the Attachment should be addressed to Joshua Marquez, (718) 935-2681.

RRG:bm
Attachments

CHINESE

AN OPEN LETTER TO IMMIGRANT PARENTS

致移民家長们的一封公开信

我欢迎你们到我们的学校来。我们非常高兴你们在这裡。你们的子女在五岁开始就有权享受公立学校的教育。学校不需知道你们家庭的移民身份。学校也不会向你们要绿卡。而你们的子女可以免费在公立学校直到他们满十一岁或得到中学文凭为止。

你们也可以享受以下各种权利：

医疗治疗权利：公立医院必需供给紧急医疗服务，不论病人的移民身份。

有权拒绝他人进入住内：你有权不让移民官员进入住内，除非他具有住宅签名的合法逮捕证明。但你也必须小心。因为如果你不让福利调查人员进入你的会损失这种福利的机会。你可以问明白他来你家的原因，他是否移民官员要求看你的证件等他也具有合法的逮捕证，他也进了你的住内。那你可查明他所看的证件是否实在逮捕证。

有权保持沉默：如果你在街上被移民官员要求盘问。你必需告知你的姓名，但你有权保持沉默不回答任何问题。但你有关你的移民身份或是你所有犯罪的问题都可以不必回答。你又需拿出任何证件，你必需被逮捕，你在坚持要求找律师商量。移民局会给你一张名单以便你找一名律师为你辩护。

有权拒绝在任何文件上签名：除非你预先与你的律师商量。你又要移民局给你的任何文件上签名，因为你签名之后，你可能就会放弃某种权利，或管应回到你来美国前的家园住地去。

有权享受社会福利：1996年国会通过一项重要法例，这项法例是不让非移民向有关任何求取福利的移民身份。你有权享受医疗，消防，治安等和各项行业保障。

请记住，所有儿童都欢迎进入我们的学校，我们不会问你们的移民身份，这是我们的政策，这也是我们的

无论 ——

BEST COPY AVAILABLE

HAITIAN

AN OPEN LETTER TO IMMIGRANT PARENTS

LÈT TOU LOUVRI POU PARAN SAN REZIDANS

Mwen vle fè w konnen tout lekòl piblik nan vil Nouyòk la poze gwo bèlantre pou w. Nou kontan anpil w rete nan vil Nouyòk la. Se pou sa, nou vle w pase anba gwo bèlantre sa a ak kè kontan, ak kè poze!

Mwen vle w konnen tou: tout timoun ki gen laj 5 kan gen dwa ale lekòl piblik gratis. Lekòl piblik yo pa gen okenn kesyon pou yo poze w sou kat rezidans ou (kat vèt la). Epitou, tout elèv ki poko gen on diplòm lekòl segondè, ki poko gen 21 nan kapab ale lekòl piblik gratis.

Fò w konnen tou ni w menm ni farmi ou gen lòt dwa. Paregzanp nou gen dwa:

- MANDE LASWENYAY LOPITAL- Lopital ki resevwa lajan govènman pou ede yo fonksyone oblije bay tout moun ki gen ka emèjensi laswenyay, san yo pa mande yo kesyon sou kat vèt la (green card).

- REFIZE MOUN RANTRE LAKAY NOU- Si yon ofisye Depatman Imigrasyon pa gen on manda on jij siyen, nou gen dwa pa kite l antre lakay nou. Pafwa, se kèk benefis n ap resevwa yo vle wè si nou merite. Kenbe ofisye sa a nan pa pòt la jistan nou konnen ki sa manda a espesifye pou ofisye a tcheke lakay nou. Sonje tou, sa manda a espesifye a, se sa sèlman li ka tcheke.

- KENBE SILANS NOU- Si on ofisye Imigrasyon oubyen lapolis rete nou nan lari, nou gen dwa bay non nou sèlman, epi anyen ankò. Nou pa oblije di si nou gen kat rezidans lan, oubyen si nou te patisipe nan on krim. Nou pa bezwen montre okenn dokiman. Si yo ta arete nou, nou fèt pou mande on avoka menm lè a. (Dayè, Imigrasyon gen on lis òganizasyon ki ka fè nou jwenn on avoka.)

- REFIZE SIYEN DOKIMAN- Pa siyen okenn dokiman Imigrasyon san nou pa wè on avoka. Lè nou siyen on dokiman Imigrasyon, nou pran chans pou nou pèdi tout dwa nou, oubyen nou pran chans pou Imigrasyon voye nou tounen nan peyi nou.

- MANDE AJANS LETA SÈVIS- Mè vil Nouyòk la te di an 1985 ke okenn anplwaye leta pa gen dwa bay Depatman Imigrasyon enfòmasyon sou moun ki vin mande sèvis nan ajans leta. Se pou sa, nou gen dwa gen pwoteksyon lapolis ak pwoteksyon ponpye. Gen ajans tou ki ka ede nou lè magazin oubyen biznis ap tronpe nou, oubyen lè mèt kay ap fè nou abi.

SONJE KE LEKÒL PIBLIK YO POZE GWO BÈLANTRE POU TOUT ELÈV. LEKÒL YO PARE POU RESEVWA TOUT ELÈV AK DE BRA. NOU PA GEN OKENN ENTERÈ POU NOU POZE KESYON SOU KAT VÈT LA. LÈT TOU LOUVRI SA A REPREZANTE KONVIKSYON NOU. LÈT TOU LOUVRI SA A REPREZANTE PWOMÈS NOU!

FRENCH

AN OPEN LETTER TO IMMIGRANT PARENTS

LETTRE OUVERTE AUX PARENTS IMMIGRANTS

Tout en me réjouissant de votre présence ici, je veux vous offrir un acceuil chaleureux dans notre système scolaire. Soyez le/la bienvenu(e)!

Je tiens à vous informer par la présente que votre enfant, dès l'âge de 5 ans, est bénificiaire d'une éducation publique gratuite. Aussi dois-je vous assurer qu' il est interdit aux autorités scolaires de vous interroger au sujet de votre status d'immigrant, la "green card." Sachez bien que notre système scolaire offre une éducation publique gratuite à quiconque âgé de moins de 21 ans et à quiconque n'a pas reçu son diplôme d'études secondaires (high school diploma).

Outre le droit de fréquenter une école publique dans les conditions suscitées, la loi américaine vous offre les droits suivants. Vous avez le droit de:

* RECEVOIR DES SOINS MEDICAUX- Les hôpitaux subventionnés par l'état ont pour devoir de dispenser les services de premiers soins sans se soucier du status de résidence du patient.

* REFUSER ACCES A VOTRE DEMEURE- Vous avez le droit de ne pas recevoir un agent du Département de l'immigration dans votre appartement à moins qu'il ait un mandat officiel signé d'un juge. Aussi, le mandat doit spécifier les documents à vérifier. Soyez avisé que cette vérification peut avoir but de justifier votre éligibilité à recevoir une subvention publique.

* GARDER LE SILENCE- Si vous êtes appréhendé par un agent du Département de l'immigration ou par un agent de police, soyez prudent de ne lui donner que votre nom et de ne divulguer aucune information au sujet de votre statut de résidence ou d'une allégation criminelle. Au cas où vous seriez escorté, insistez qu'on vous mette en contact avec un avocat. (Le Département de l'immigration, en cas de besoin, vous procurera une liste d'organisations civiques pouvant vous référer à un avocat.)

* REFUSER DE SIGNER TOUT DOCUMENT- N'apposez pas votre signature à aucun document émanant de l'Immigration sans avoir consulté un avocat. Votre signature peut, dans certains cas, représenter la forfaiture de vos droits ou encore, votre consentement à votre rapatriement.

* BENEFICIER DES SERVICES MUNICIPAUX- Selon un mémorandum signé par le Maire de la ville de New York en 1985, il est interdit aux fonctionnaires d'informer l'Immigration au sujet du statut de résidence d'aucune personne nécessiteuse d'un service public. Vous avez droit à la protection de la police et des pompiers, d'enregistrer vos doléances contre les contracts frauduleux et contre les abus des propriétaires d'immeubles.

RAPPELEZ-VOUS QUE NOTRE SYSTEME SCOLAIRE TEND LES BRAS A TOUS LES ENFANTS. NOUS NE TIENDRONS PAS COMPTE DE VOTRE STATUS DE RESIDENCE. QUE LA PRESENTE TEMOIGNE NOTRE LIGNE DE CONDUITE. QUE LA PRESENTE TEMOIGNE NOTRE PROMESSE.

KOREAN

AN OPEN LETTER TO IMMIGRANT PARENTS

이민 학부모님께 드리는 공개 서한

본인은 여러분들이 저희들 학교에 오신 것을 진심으로 환영하고자 합니다. 만나뵙게 되어 정말 반갑습니다. 여러분의 자녀들은 5살부터 무료로 공립교 교육을 받을 권한이 있읍니다. 학교 당국은 여러 학부모님들의 이민 상태를 알려고 하지 않습니다. 학교는 "그린카드" 제시를 요구하지 않습니다. 그리고, 여러분의 자녀는 고등학교 졸업장을 받거나, 무엇이던 먼저 이루어질 때까지 무료로 공립교 교육을 받을 수 있읍니다.

여러분의 가정은 또한 다음과 같은 권한을 갖고 있읍니다.

*의료 혜택을 받을 수 있는 권한 - 공공 자금 조달을 받고 있는 병원은 환자의 이민 상태와 상관없이 응급 의료 서비스를 제공하도록 되어 있읍니다.

*가택 침입 거부권 - 판사가 서명한 정당한 증서를 소지하지 않은 한 이민국 직원이 여러분의 가택을 조사하는 것을 거부할 권한을 지니고 있읍니다. 그러나 조사가 어떠한 혜택의 해당 자격을 증명하기 위한 경우인 경우에는 그 혜택을 상실할 수 있다는 것을 아셔야 합니다. 수사원이 여러분 댁에 온 이유를 알아 보십시오. 만약 증서를 소지한 수사원이 특정 서류 제시를 요구할 때는, 증서에 필요한 서류의 목록이 써 있어야만 합니다.

*묵비권 - 이민국 직원이나, 경찰관원에 의해 거리에서 제지당하였을 때, 여러분은 이름을 밝혀야 하나, 여러분의 이민 상태나, 범죄 상관 여부에 관해서 묵비권을 행사할 수 있읍니다. 어떠한 서류도 보여줄 필요가 없읍니다. 만약 체포되었을 경우, 변호사에게 말하겠다는 것을 주장하시오. (이민국은 여러분에게 변호사를 선정해 줄 수 있는 기관의 이름을 제공할 것입니다.)

*서류에 서명을 거부할 수 있는 권한 - 변호사에게 말하기 전에 이민국에서 제시하는 어떠한 서류에도 서명을 하지 마시오. 서류에 서명함으로, 여러분은 어떤 권한을 포기하거나, 여러분의 본국으로 돌아가는 것을 승낙하게 됩니다.

*시 제공 서비스를 받을 수 있는 권한 - 1985년 시장은 시청 직원이 시 제공 서비스를 구하는 사람들의 이민 상태를 이민국에 통보하는 것을 금하는 메모를 발행하였읍니다. 여러분은 경찰, 소방 보호의 권한과, 소비자에 대한 사기 행위, 집주인 행패등에 도움을 받을 수 있읍니다.

여러분의 자녀들이 환영받고 있다는 것을 알아 주십시오. 우리는 여러분의 이민 상태를 문의하지 않습니다. 이것이 우리들의 시책이며 약속입니다.

AN OPEN LETTER TO IMMIGRANT PARENTS

CARTA ABIERTA A LOS PADRES INMIGRANTES

Les quiero dar la bienvenida a nuestras escuelas. Tenemos mucho gusto de que ustedes estén aquí. Su hijos, desde la edad de 5 años tienen el derecho a una educación pública gratis. La escuela no quiere saber el estado de inmigrante de su familia. La escuela no les va a pedir su "green card-(tarjeta verde)". Sus hijos tienen el derecho de asistir a la escuela pública, gratis, hasta que cumplan 21 años o consigan un diploma, cualquiera que ocurra primero.

Su familia tiene también otros derechos:

* EL DERECHO AL TRATAMIENTO MÉDICO - Los hospitales públicos tienen que proveer servicios médicos de emergencia sin tener en cuenta el estado inmigrante del paciente.

* EL DERECHO DE NEGAR LA ENTRADA A SU CASA - Usted tiene el derecho de negar la entrada a su casa a un agente de inmigración a menos que tenga una autorización legal, firmada por un Juez. Pero tengan en cuenta que pueden perder un beneficio si la investigación es para verificar su elegibilidad. Es importante averiguar la razón que el/ella quiere verle a usted. Si el agente exige ver documentos al entrar a su casa con una autorización, estos documentos deben aparecer en la autorización.

* EL DERECHO DE PERMANECER CALLADO - Si usted está detenido por un agente de inmigración o un policía, usted debe dar su nombre, pero Ud. tiene el derecho de permanecer callado en cuanto a su estado de inmigrante o su implicación en un crimen. No es necesario mostrar sus documentos. Si usted está detenido, usted debe insistir a hablar con un abogado. (El INS les proverá con una lista de organizaciones que les proveen un abogado).

* EL DERECHO DE NEGARSE A FIRMAR DOCUMENTOS - Ud. no debe firmar su nombre a cualquier documento ofrecido por el INS sin hablar primero con un abogado. Por firmar un documento, es posible que ud. está rechazando algunos derechos o que ud. está aceptando volver a su país.

* EL DERECHO A LOS SERVICIOS MUNICIPALES - En 1985, el alcalde promulgó un memorándum que los empleados de la ciudad no deben informar al INS del estado de inmigración de cualquier persona necesitando la ayuda de los servicios de la ciudad. Usted tiene el derecho a la protección dadA por el departamento de policía y de fuego, y la ayuda con el abuso por los dueños de casa y el engaño al consumidor.

RECUERDENSE, TODOS LOS NIÑOS ESTÁN BIENVENIDOS EN NUESTRAS ESCUELAS. NO LES VAMOS A PREGUNTAR DE SU ESTADO DE INMIGRACIÓN. ES NUESTRA POLITICA. ES NUESTRA PROMESA.

AN OPEN LETTER TO IMMIGRANT PARENTS (GREEK)

ΑΝΟΙΚΤΗ ΕΠΙΣΤΟΛΗ ΠΡΟΣ ΤΟΥΣ ΜΕΤΑΝΑΣΤΕΣ ΓΟΝΕΙΣ

Σας καλωσορίζω όλους στα σχολεία μας. Χαιρόμαστε που είστε εδώ. Τα παιδιά σας από 5 χρονών και πάνω δικαιούνται δωρεάν δημόσιας εκπαίδευσης. Το σχολείο δεν θέλει να γνωρίζει τη μεταναστευτική κατάσταση της οικογένειάς σας. Το σχολείο δεν θα ζητήσει "πράσινη κάρτα". Και τα παιδιά σας μπορούν να παρακολουθούν τα μαθήματα τους στο δημόσιο σχολείο μέχρι να γίνουν 21 ετών ή να αποκτήσουν το Δίπλωμα τους.

Η οικογένειά σας έχει και άλλα δικαιώματα:

* ΔΙΚΑΙΩΜΑ ΙΑΤΡΙΚΗΣ ΦΡΟΝΤΙΔΑΣ - Νοσοκομεία που παίρνουν δημόσια επιχορήγηση απαγορεύεται να παρέχουν τις πρώτες βοήθειες ανεξάρτητα από την μεταναστευτική κατάσταση του ασθενούς.

* ΔΙΚΑΙΩΜΑ ΝΑ ΑΡΝΗΘΕΙΤΕ ΤΗΝ ΕΙΣΟΔΟ ΣΤΟ ΣΠΙΤΙ ΣΑΣ - Έχετε το δικαίωμα να μην επιτρέψετε την είσοδο στο σπίτι σας κανενός αξιωματούχου της Μεταναστευτικής υπηρεσίας, εκτός και εάν έχει ένταλμα εισόδου υπογεγραμμένο από το Δικαστή. Αλλά προσέξατε γιατί μπορεί να χάσετε το δικαίωμα του ενοχλητικού για νομιμοποίηση. Ζητήστε να μάθετε την ιδιότητα του αξιωματούχου. Εάν σας ζητούν να του παρουσιάσετε έγγραφα βεβαιωθείτε ότι αυτά που ζητά είναι καταχωρημένα ονομαστικά στο υπογεγραμμένο ένταλμα εισόδου.

* ΔΙΚΑΙΩΜΑ ΝΑ ΜΗΝ ΜΙΛΗΣΕΤΕ - Εάν σας σταματήσουν στο δρόμο ένας αξιωματούχος της μεταναστευτικής υπηρεσίας ή ένας αστυνομικός έχετε το δικαίωμα να μην αποκαλύψετε την μεταναστευτική σας κατάσταση ή οποιο άλλο στοιχείο άνήκει στον ουσιαστικό και δεν απαιτείται να δώσετε κανένα έγγραφο. Εάν συλληφθείτε, να επιμείνετε να μιλήσετε σε δικηγόρο. (Η Μεταναστευτική υπηρεσία θα σας δώσει μία κατάσταση από οργανισμούς που θα σας παρέχουν έναν δικηγόρο.)

* ΔΙΚΑΙΩΜΑ ΝΑ ΑΡΝΗΘΕΙΤΕ ΤΗΝ ΥΠΟΓΡΑΦΗ ΟΠΟΙΟΥΔΗΠΟΤΕ ΕΓΓΡΑΦΟΥ - Δεν θα πρέπει να υπογράψετε το όνομα σας σε κανένα έγγραφο που θα σας δώσει η Μεταναστευτική υπηρεσία χωρίς πρώτα να μιλήσετε με έναν δικηγόρο. Υπογράφοντας ένα έγγραφο μπορεί να απωλέσετε ουσιώδη δικαιώματα ή να συμφωνήσετε να επιστρέψετε στην χώρα της καταγωγής σας.

* ΔΙΚΑΙΩΜΑ ΥΠΟΒΟΛΗΣ ΤΗΣ ΠΟΛΙΤΕΙΑΣ - Το 1993 ο Δήμαρχος εξέδωσε ένα υπόμνημα στο οποίο αναφέρεται ότι οι υπάλληλοι του Δήμου δεν πρέπει να δίδουν πληροφορίες στη Μεταναστευτική υπηρεσία ~~[illegible]~~ ΑΥΤΗ ΕΙΝΑΙ Η ΤΑΣΗ ΜΑΣ.

AN OPEN LETTER TO IMMIGRANT PARENTS

I want to welcome all of you to our schools. We're glad you're here Your children, starting from 5 years of age have a right to a free publi education. The school does not want to know the immigration status of your family. The school will not ask you for a "green card." And, your children may attend public school free until they are 21 or receive a diploma, whichever comes first.

Your family has other rights too:

*RIGHT TO MEDICAL TREATMENT - Publically funded hospitals are required to provide emergency medical services regardless of the patient's immigration status.

*RIGHT TO REFUSE ENTRY INTO YOUR HOME - You have the right to refuse to allow an immigration agent into your home unless the agent has a valid warrant, signed by a judge. But be aware that you may loose a benefit if the investigation is to verify your eligibility for a benefit. Find out why he/she is at your door. If the agent demands to see documents when entering your home with a warrant, the warrant must list the documents that should be shown.

*RIGHT TO REMAIN SILENT - If you are stopped on the street by an immigration or police officer, you should give your name but you have the right to remain silent about your immigration status or involvement in any crime. There is no need to show any documents. If you are arrested, you should insist on speaking to an attorney. (The INS will provide you with a list of organizations that may provide you an attorney.)

*RIGHT TO REFUSE TO SIGN ANY DOCUMENTS - You should not sign your name to any document offered by the INS without first speaking to an attorney. By signing a document, you may be giving up certain rights, or be agreeing to return to your country of origin.

*RIGHT TO CITY SERVICES - In 1985, the Mayor issued a memo stating that city employees were not to inform INS of the immigration status of any persons seeking city services. You have a right to police and fire protection and help with consumer fraud and landlord abuses.

REMEMBER, ALL CHILDREN ARE WELCOME IN OUR SCHOOLS. WE WILL NOT ASK YOU ABOUT YOUR IMMIGRATION STATUS. THAT IS OUR POLICY. THAT IS OUR PROMISE.

The Commonwealth of Massachusetts
Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

September 14, 1990

City Solicitor
City Hall

Re: Undocumented Alien Students

Dear :

This follows up on our September 12th phone conversation about the rights of children who are undocumented aliens to attend public school. As we discussed, the U.S. Supreme Court, in Plyler v. Doe, 457 U.S. 202 (1982) held that children who are undocumented aliens are legally entitled to attend the public schools of the city or town where they live, regardless of their immigration status. The subject of school attendance rights of students who are not U.S. citizens is discussed on pages 4-5 of the enclosed 1985 Advisory Opinion on Residence for School Attendance Purposes, published by our office.

Plyler prohibits public schools from taking action that would result in the denial of the right of undocumented alien children to attend public school, on the basis of their immigration status. Inquiring about a child's immigration status, or requesting documentation that might expose a child's or family's undocumented status, would have a chilling effect on the enrollment of these children in school. School officials are well-advised to avoid such practices, both because they are wasteful (the school district still must enroll the child), and because of the potential legal liability to the district for making a prohibited inquiry.

I have enclosed some additional materials that address these issues in more detail: a one-page "School Opening Action Alert," and pages 1-17 of a booklet entitled "Immigrant Students: Their Legal Right of Access to Public Schools." Both items are published by the National Coalition of Advocates for Students, and they provide useful guidance for school officials and administrators.

I am taking the liberty of sending a copy of this letter to the Superintendent of Schools and School Department legal counsel as well. I hope the information will be helpful to you and to them.

Sincerely,

Rhoda E. Schneider

Rhoda E. Schneider
General Counsel

RES/ks
Enclosures:
cc: Superintendent

Maureen Wark, Department of Education

The Commonwealth of Massachusetts
Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

July 1985

ADVISORY OPINION ON RESIDENCE FOR SCHOOL ATTENDANCE PURPOSES

The Massachusetts Department of Education is frequently asked questions about residence for school attendance purposes. This advisory opinion will discuss the state statutes and regulations governing this issue.

The General Rule - Massachusetts General Laws, Chapter 76, §5

Chapter 76, §5 of the Massachusetts General Laws states the basic residency rule, as follows:

> Every person shall have a right to attend the public schools of the town where he actually resides . . .

The Department of Education interprets this statute literally: children who actually reside (i.e., live) in a town, whether with their natural parents, other relatives, by themselves, in a foster or group home or in virtually any other living situation, are legally entitled to attend the town's public schools. In short, the statute avoids technical questions of custody, guardianship and domicile; the only question to ask is: where does the child actually live.

This literal interpretation of G.L. c.76, §5 is supported by the statute's legislative history as well as Opinions of the Attorney General and the courts. Prior to a 1913 amendment, G.L. c.76, §5 referred to the legal residence of the child's parent or guardian, or the child's residence if there was no parent or guardian present. The 1913 amendment omitted the technical issue of custody by basing the right to attend school on the child's actual residence.

In Anrig v. Joseph (Sup. Ct. No. 18871, decided February 8, 1977), the Superior Court upheld the literal reading of the statute. This case involved two secondary school students who moved from their mother's home in Dedham to their grandmother's home in Norwood because of family problems. Their grandmother did not become their legal guardian. Norwood refused to admit the students unless they paid tuition or their grandmother became their legal guardian. The court held that these students were entitled to a free public education in Norwood, the town in which they actually resided, regardless of their guardianship.

The court stated on page 11 of its opinion:

> The authority of the school committee to restrict admission to its schools is contained in and circumscribed by G.L. c.76, §§5 and 6. There is nothing in either section which gives the school committee the right or the power to condition attendance upon requirements other than those set forth therein. (Emphasis added.)

A school district may not condition a student's admission on such things as legal guardianship, parents' residence or receipt of certain documents, unless those documents are specifically mandated by statute. For example, a school district cannot deny a student admission to school because locally required forms have not been submitted. However, it can deny admission if evidence of vaccination and immunization are not presented as required by G.L. c.76, §15.

The literal interpretation of G.L. c.76, §5 was reaffirmed in Mulrain v. Board of Selectmen of Leicester, 479 N.E.2d 745 (Mass. App. 1985). The court held that while the statutory meaning of residency varies, where a particular statute uses the expression "actual residence," residency becomes a matter of "'personal presence' with or without any implication of civic privileges or duties." Id., 479 N.E.2d at 746. Since G.L. c.76, §5 states that every person shall have a right to attend the public schools of the town where s/he actually resides, residence under this statute does not include any other factors except the location of the child's home.

There have been a few situations concerning houses that are located in more than one municipality. If the house where the child resides and lot are bisected by the town line, the child is a resident of the town in which the substantial portion of the house is located. Teel v. Hamilton-Wenham Regional School District, 433 N.E.2d 907 (Mass. App. 1982).

In those cases where the parents live in two different communities, the dispositive issue for school attendance purposes is the residence of the child. Since the statute does not address the issue of custody, this cannot be used to limit the child's right to attend school in the community in which s/he lives with a parent even if that parent was not awarded custody.

Limitation to the Rule - Massachusetts General Laws c.76, §6

The only limitation on a student's right to attend the schools of the town where s/he actually resides is G.L. c.76, §6, which states:

> If a child resides temporarily in a town other than the legal residence of his parent or guardian for the special purpose of there attending school, the said town may recover tuition from the parent or guardian, unless under section twelve or chapter seventy-one, such tuition is payable by a town. Tuition payable by the parent or guardian shall, for the period of attendance, be computed at the regular rate established by the school committee for non-resident pupils, but in no case exceeding the average expense per pupil in such school for said period. The school committee of the town in which a child is temporarily residing for the special purpose of there attending school may waive all or part of the tuition charge for such child.

Therefore, if the child resides in a town for the sole purpose of going to its schools, the town may charge tuition. Since few children live in a town apart from their parents "for the special purpose of there attending school," the applicability of this section is limited. School authorities must make a factual determination of the student's actual residence and the purpose for living apart from the parents. Since the statute does not discuss the method of inquiry, school districts should use reasonable discretion in

deciding how to determine the circumstances of a student's residence. If that purpose is solely to attend the local public schools, tuition may be charged.

Section 6 also permits waivers of tuition. The school committee may accept a waiver of tuition if, for example, parents plan to move to town later in the school year but want the child to attend one school for the entire year. Of course, the town may elect not to waive tuition, and may charge tuition on a pro rata basis.

Voluntary Arrangements for Admission of Non-resident Students

Under G.L. c.76, §12, any student, with the consent of the school committee of the community where s/he resides, may attend the public schools of another town at the expense of the home community. The tuition terms must be determined by the two school committees involved.

Students Who Are Not U.S. Citizens

A foreign student who resides in a community has the same right to attend public schools as a student who is a U.S. citizen. School districts may not charge tuition on the basis of lack of citizenship, permanent residency or the parent's or child's legal or illegal immigration status. A recent federal court decision clearly establishes that alien children must be treated in the same manner as U.S. citizens for school attendance purposes. See Pena v. Board of Education of City of Atlanta, 620 F.Supp. 293 (D.C. GA 1985). The same method of analysis should be used for non-U.S. citizens as for U.S. citizens, i.e., does the child actually reside in the community, regardless of visa status. However, if a student has an F-1, or student visa, such a student may be charged tuition. This is because the F-1 visa is issued to an alien whose residence is in a foreign country which the student has no intention of abandoning, and who "seeks to enter the United States temporarily and solely for the purpose of pursuing a course of study" at an established school. 8 U.S.C. §1101(9)(15)(F)(i). Therefore, the holder of an F-1 visa is living in the city or town for the sole purpose of attending school by the terms of the visa and tuition may be charged. This does not apply to the child of someone with the F-1 visa, since the child, who would have an F-2

visa, would not be in the community to attend school but to accompany his/her parent(s).

If a child is an illegal alien, the child must nonetheless be admitted to school if s/he is an actual resident of the town. In Plyler v. Doe, 457 U.S. 202 (1982), the U.S. Supreme Court held that school districts may not withhold an education from children who are not legally admitted to the U.S. Schools must offer illegal alien children an education on the same basis as U.S. residents and legal aliens.

Special Education - Massachusetts General Laws, c.71B, §1 et seq. ("Chapter 766")

The residency rules of Chapter 766 follow that of G.L. c.76, §5, except in certain situations described below. Generally, students with special needs are entitled to a free public education from the town in which they actually reside. If a non-resident student is admitted to school and is later found to be in need of special education, the school district may not terminate admission or preclude continued admission on the basis of special education needs. However, the district may charge a higher tuition to reflect the higher per pupil cost.

The Chapter 766 Regulations (603 CMR 28.00, ¶202.0) allocate responsibility for a student's special education program based on the particular living situation. Under ¶202.1(a), students who live with their fathers, mothers or guardians, or who have established their own residence as adults, are the responsibility of the school committee of the community in which they live. Under ¶202.1(b), students living in a foster home with a total of six or fewer children not related to the head of the household are the responsibility of the school committee of the town where the household is located. However, under ¶202.1(c), if a student is in a private or state operated residential school, hospital, correctional facility or like institution, the school district of the parent or guardian with whom the student resides when s/he is not that facility, is responsible for providing special education, not the school district in which the facility is located. Under ¶202.1(d) students in living situations other than those specified in

¶¶ 202.1(a)(b) and (c) (for example, large "group homes") are the responsibility of the school committee of the town where they actually live, but that school committee may "bill back" the costs of the student's special education to the school committee of the town where his/her parent or guardian lives. If a student falls under ¶¶ 202.1(c) and (d), and has no father, mother or guardian living in the Commonwealth, the Department of Education will assign a city, town or school district to the child for special education purposes.

Vocational Education - Massachusetts General Laws c.74, §§ 7, 8

Students who actually reside in towns participating in a regional vocational technical school district, and who would be entitled to attend the public schools as outlined above, have a right to attend that vocational technical school within the enrollment limits (if any) set in the regional district agreement. Selective secondary schools may exclude resident students on the basis of criteria established by their Admissions Plan and approved by the Massachusetts Department of Education.

Under G.L. c.74, §7, if a student is a resident of a town that does not maintain an approved vocational educational program, the student may be admitted to a vocational school in another town. If the non-resident placement is approved by the Department of Education, the town where the student resides is required to pay for the student's tuition and transportation. The standards and procedures for approval of non-resident vocational placements are available from the Department's Division of Occupational Education

The Department of Education hopes this advisory opinion answers some of the many questions about residence for school attendance purposes. If you need additional information, please contact the Department of Education Legal Office or your local counsel.

/kal

SCHOOL OPENING ALERT

IMMIGRANT STUDENTS' RIGHT OF ACCESS

The U.S. Supreme Court has ruled in *Plyler v. Doe* (1982) [1] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. [2]

Public schools are prohibited from:

* denying undocumented students admission to school on the basis of their undocumented status during initial enrollment or at any other time;

* treating undocumented students disparately on the basis of their undocumented status to determine residency;

* engaging in practices which may "chill" the right of access to public schools as established by *Plyler v. Doe*;

Public schools are prohibited at any time from:

* requiring students or parents to disclose or document their immigration status;

* making inquiries of students or parents which may expose their undocumented status; [3]

* requiring social security numbers of all students, as it may expose the undocumented status of students or parents. [4]

If a child's school file should contain information exposing the student's undocumented status, the Family Educational Rights and Privacy Act (FERPA) and various state privacy acts **prohibit** schools from providing any outside agency--**including the Immigration and Naturalization Service**--with such information without first acquiring permission from the student's parents. [5]

In summary, public schools and their personnel are prohibited under *Plyler v. Doe* from adopting policies or taking actions which either deny or result in the denial of access by undocumented students to public schools on the basis of their undocumented status. Additionally, school personnel--especially building principals and those involved with student intake activities--should be informed by the superintendent that they are under no legal obligation to enforce U.S. immigration laws.

Regulations issued by the Chancellor's Office of the New York City public schools state: "...the monitoring of the immigration status of a child or parent is not the proper function of the New York City Board of Education." The regulations direct all school personnel to refer any such questions from outside agencies to the school system's Office of Legal Affairs.

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1. 457 U.S. 202 (1982).

2. In addition to this right, undocumented students have an obligation under state law, as do all other students, to attend primary and secondary schools until they reach a mandated age.

3. In *New Voices: Immigrant Students in U.S. Public Schools*, NCAS documented the lack of comprehensive data on immigrant students. Such data is needed to monitor academic development, to plan curriculum and teaching strategies, and to advocate on behalf of immigrant students. See *Immigrant Students: Their Legal Right of Access to Public Schools* (NCAS, 1989) for guidance on data collection procedures and safeguards.

4. Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are making application on behalf of a student for a free lunch and/or breakfast program need only indicate on the application that they do not have a social security number.

5. Even the act of requesting permission of undocumented parents may have the affect of "chilling" the student's *Plyler* right of access and, thus, constitute a prohibited practice.

LLAMADO URGENTE
ANTES DE EL INICIO DEL AÑO ESCOLAR.

En 1982, La Corte Suprema decidió en el caso titulado *Plyer v. Doe*[1] que los estudiantes indocumentados tienen el derecho de asistir a las escuelas públicas. Mas claramente, la corte determinó que los niños y los adultos jóvenes indocumentados, tienen el mismo derecho a las escuelas públicas primarias y secundarias que el que tienen sus contrapartes de nacionalidad estadounidense[2].

Bajo esta decisión esta prohibido:

* Negar admisión a la escuela a estudiantes indocumentados basado en su estado de ser indocumentado, ya sea al momento de la matricula o en cualquier otro momento.

* Tratar a los estudiantes indocumentados de manera discriminatoria en lo referente a la determinación de lugar de residencia basado en su estado como indocumentados.

* Tomar medidas o reglamentos que pudieran resultar en "atemorizar" a la comunidad indocumentada sobre su derecho de acceso a las escuelas públicas como lo estableció el caso *Plyler*.

Mas específicamente, las escuelas públicas tienen prohibido en todo momento, lo siguiente:

* Requerir a los estudiantes o a sus padres que declaren y/o documenten su estado de inmigración.

* Hacer investigaciones de los estudiantes o sus padres que pueden resultar en la exposición del estado indocumentado del estudiante o sus padres[3].

* Requerir el número de tarjeta de seguro social de cualquier estudiante, lo cual podría resultar en la delación del estado indocumentado del estudiante o sus padres[4].

Si el archivo personal de un niño contuviera información delatora del estado indocumentado del estudiante, FERPA[5] (Derechos Educacionales para la Familia y el Acta de Privacidad) y las actas estatales de privacidad prohiben a las escuelas el facilitar a cualquier agencia ajena a la escuela, incluyendo la migra, información al respecto; sin antes conseguir el permiso de los padres del estudiante[6].

En resumen, las escuelas públicas y su personal tienen prohibido bajo la decisión *Plyler*, el adoptar políticas o tomar cualquier acción que niegue, o que resulte en negar el derecho al acceso que los estudiantes indocumentados tienen a la educación basado en su estado indocumentado. El personal de las escuelas -especialmente principales y secretarios-deberían ser informados por el superintendente de que ellos no tienen ninguna obligación legal de imponer a otros que cumplan con la leyes migratorias y, aun mas, que tienen prohibido tomar cualquier acción que niegue a los estudiantes indocumentados su derecho al acceso a la educación pública.

"...tenemos que dar un mensaje claro en cuanto a que no somos instrumentos para el cumplimiento de la ley [La Acta de Reforma y Control de Immigracion de 1986]...no somos nosotros quienes la redactamos, ni somos agentes del gobierno federal para implementarla."

Nathan Quinones - Ex-Canciller de Educacion de la ciudad de Nueva York - Testimonio público - Ciudad de Nueva York.

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1. 457 U.S. 202 (1982).

2. Ademas del derecho a acceso, los estudiantes indocumentados estan obligados bajo ley estatal, al igual que los demás estudiantes, a asistir a la escuela primaria y secundaria hasta que alcance la edad mandatoria.

3. NCAS, en Nuevas Voces (1988), documentó la falta de información global sobre los estudiantes indocumentados para efectos de monitoreó, planificación de enseñanza y advocacia de sus derechos y recomendó que las escuelas comiencen inmediatamente a recaudar tal información.La recaudación de esta información, en todo caso, necesita limitarse a la compilación de información pedagógicamente necesaria yque esta información no puede interferir o dañar de ninguna manera los derechos de los estudiantes y sus padres. En el caso de los estudiantes inmigrantes, esto significa limitar la colección de datos de una manera en que se garantice el no crear temores enel ejercicio de los derechos que la decisión *Plyler* les dá. Requerir que un estudiante declaré su país de origen, puede justificadamente crear temor de ser delatado acerca de su estado como inmigrante indocumentado. Si, en todo caso, la escuela: a) Limita la colección de información con efectos atemorizantes al punto del país de origen; b) Desarrolla mecanismos apropiados para asegurar que esta información será únicamente usada para efectos pedagógicos a través de los cuales los estudiantes y sus padres puedan ser cuidadosamente informados de la necesidad de tal información y dado garantías de que tal información será únicamente usada para efectos pedagógicos; y c) Estrictamente monitorea e impone tales procedimientos, el riesgo de colectar tal información puede ser minimizado y por tanto, justificable.

4. Estudiantes sin un número de seguro social, deberán ser asignados un número emitido por la escuela.

5. Iniciales en inglés de Family Educational Rights and Privacy Act.

6. Aun el acto de solicitar la autorización de los padres puede tener efectos atemorizantes sobre el ejercicio de los derechos de acceso de los estudiantes resultados de la decisión *Plyler*, por lo tanto constituyendo una practica prohibida e ilegal.

Office of Educational Equity
The Commonwealth of Massachusetts
Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

September 17, 1991

Superintendent
Public Schools

Massachusetts

Dear Superintendent

Enclosed please find the Advisory Opinion from the Massachusetts Department of Education Law Department dealing with the attendance of alien students whether they are legal or illegal.

We are not even to ask students or their parents for documentation that proves whether they are legal or illigal residents of this country. We are not immigration officials nor are we to contact such, to "check up on" a student.

I've also enclosed a copy of Chief Legal Counsel Rhoda Schneider's letter to the City about undocumented aliens, plus a copy of the NCAS bulletin that she mentioned in her letter.

I hope all this will be helpful to you and your high school administrators.

Sincerely,

Maureen M. Wark

Maureen M. Wark
Civil Rights Specialist

MMW/ek

Enclosures

BEST COPY AVAILABLE

The Commonwealth of Massachusetts
Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

M E M O R A N D U M

September 24, 1990

TO: Maureen Wark
Office of Educational Equity

FROM: Rhoda E. Schneider RES
General Counsel

RE: Admission of Student -- Age and National Origin

This follows up on our discussion of a school district that considered denying enrollment to a 16-year-old Amerasian student who was new to the community. Apparently the school officials thought that the student could be denied admission because he is over the maximum age for compulsory school attendance.

As we discussed, this student has a legal right to attend school in the community where he actually resides, under G.L. c. 76, s. 5. The state law on residence for school attendance purposes, and its application in various circumstances, are discussed in the enclosed 1985 advisory opinion.

Board of Education regulations allow each school committee to establish the permissible ages for school attendance, as long as the ages are not older than the minimum (age 6) nor younger than the maximum (age 16) established for compulsory school attendance. 603 CMR 8.02(2). However, state law also requires school districts to provide educational services (specifically, special education) to students without a high school diploma or its equivalent, through age 21. A school district that denies admission to a foreign-born or limited-English-proficient student

who has moved into the district, and who is the same age as students whom the school does educate, is vulnerable to a civil rights challenge alleging discrimination based on national origin, under G.L. c. 76, s. 5 ("Chapter 622") and Title VI of the Civil Rights Act of 1964. (Please see the enclosed February 1982 letter from Sandra Moody on this issue.) Unlawful denial of admission may, among other things, expose the school district to liability for monetary damages under G.L. c. 76, s. 16.

I hope this information is helpful to you.

/ec
Enclosures

Office of the Commissioner

The Commonwealth of Massachusetts
Department of Education

31 St. James Avenue, Boston, Massachusetts 02116

February 16, 1982

Foreign Language Coordinator
High School

Massachusetts

Re: Admission of Twenty Year
Old Cambodian Student

Dear Mr.

I am writing in response to your letter of February 2, 1982 in which you seek a clarification of your legal responsibilities in connection with a request for admission to your school by a twenty year old Cambodian student who has recently moved to

The statute governing admission of students is G.L. c. 76, § 5 which states:

> Every person shall have a right to attend the public schools of the town where he actually resides...No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, religion or national origin.
> [Emphasis added.]

In 1973 the Legislature amended that statute by substituting the word "person" for "child". Because this amendment was part of the statute that lowered the age of majority from twenty-one to eighteen, it is not clear whether this should be interpreted as extending the right to attend the public schools to people of all ages or as simply an attempt to address the issue of students who have reached the new age of majority. The Department of Education has hesitated to take the former position, but since this has never been challenged, we can't say it is absolutely correct.

In regard to the situation you raise, the person in question is still within the age range of persons a Massachusetts public school is required to serve. I refer to the definition of a school-age child with special needs in G.L. c. 71B, § 1 which includes persons between the ages of three through twenty-one. It is our opinion that, were you to refuse to admit this person, she could have a claim against you. Once you do admit her, the non-discrimination provisions of G.L. c. 76, § 5 cited above would require that you provide her with additional language help. Because has fewer than twenty Cambodian students, this could be through an English as a Second Language program or other tutorial assistance as opposed to a Transitional Bilingual Education program as required by G.L. c. 71A.

Please feel free to call if you have additional questions.

Sincerely,

Sandra L. Moody ZCS

Sandra L. Moody, Esq.
Legal Office

SLM/kal
cc:

BEC Basic Education Circulars
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF EDUCATION
PENNSYLVANIA
3 - 91

Date issued Spring 1991
Replaces BEC #N.A.

SUBJECT: Child Immigration Status Irrelevant to School Enrollment

TO: Pennsylvania School Administrators

FROM: Joseph F. Bard
Commissioner for Elementary and Secondary Education

A number of school districts are requesting immigration documentation as part of the student enrollment process. In some instances students have been denied admission because the school has determined that the documentation was unsatisfactory.

The Supreme Court in Plyler v. Doe, 407 U.S. 202 (1982), held that a child may not be refused admission to public school because of a lack of documentation showing proper immigration status.

Due to the complexity of immigration laws, an individual's status is often neither clearly "legal" nor "illegal," usually falling somewhere in the "unclear" range. Given these complexities, few, if any school officials would have the expertise to determine a child's immigration status.

In addition, parents who feel that their immigration situation may be questionable, typically will not even attempt to enroll their children if they suspect (correctly or incorrectly) that there may be a risk of deportation or other sanctions.

Based on the Plyler Supreme Court decision, it is clear that a child's immigration status is an irrelevant condition to school enrollment.

Requests for information beyond what is required by the School Code and State Board of Education Regulations for the enrollment of any public school student is unwarranted.

REFERENCES:

School Code:

Curriculum Regulations:

Pa. Code:

Purdon's:

Other:

Plyler v. Doe, 456 U.S. 202 (1982)

CONTACT:

Office of Advisory Services
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Phone: (717) 783-3750

721 Capitol Mall
Sacramento, CA 95814-4785

Superintendent
of Public Instruction

April 30, 1986

CALIFORNIA RECEIVED
MAY 16 1986
ED.

TO : DISTRICT AND COUNTY SUPERINTENDENTS OF SCHOOLS

FROM : BILL HONIG Bill Honig

SUBJECT: ADMISSION TO SCHOOL OF UNDOCUMENTED ALIENS; ACCEPTABLE DOCUMENTS FOR THE REGISTRATION OF PUPILS

Several inquiries have been received from school districts and individuals requesting the State Department of Education policy regarding the provision of educational services to children and youth who may be in the United States illegally. The policy which follows was first issued on May 10, 1978, and again on January 2, 1984. It will be issued periodically in the future. This memo may be duplicated and made available to those who may need the information.

The Education Code does not make a distinction between aliens and citizens or between legal aliens and illegal aliens. Section 48200 of the Education Code provides that "Each person between the ages of 6 and 16 years...is subject to compulsory full-time education." No exception is made in the case of illegal aliens. Similarly, no such distinction is made in the provisions of the code relating to the computation of average daily attendance.

From the foregoing, it is clear that pupils of school age are entitled to enroll in school in the district in which they reside, and, in fact, are obligated by law to do so. It is a violation of the Education Code to refuse admission to those pupils.

Any requirement of a school or school district which allows for registration to occur only when a birth certificate is presented may have an adverse effect on some parents who would otherwise present their child or children for attendance. Section 48002 of the Education Code indicates that the following documents are acceptable for registration purposes: a birth certificate; a statement by the local registrar or a county recorder certifying date of birth; an attested baptism certificate; a passport. Where none of these are available an affidavit of the date and place of birth by a parent or guardian of the child may be accepted.

The California Health and Safety Code, in Section 10520, defines "affidavit" (for the purpose of establishing a record of birth) as "a written statement executed under oath by a person who at the time of birth was of sufficient age to have knowledge of the facts of birth and shall include the full name of the person whose birth is being registered, the names of his/her parents, the date and place of his/her birth and the basis of the affiant's knowledge of these facts." It is apparent that most parents would be legally qualified to be affiants.

Parents who personally take their children for enrollment should receive an indication (either oral or written) of the opportunity to provide the required verification of birth and age information by presentation of any of the above-listed documents.

BH:cp

Palm Beach County School Board

Report

Complaint filed by Florida Rural Legal Services,Inc.

On-site Review/Report By:

Clenteria Knight,
Program Specialist Supervisor

Assisted By:

Lisa Gale, Program Specialist

Special Programs/Subsection

Date submitted August 8, 1991

BACKGROUND

The Department received a letter of complaint on May 13, 1991, from Florida Rural Legal Service (FRLS), alleging that practices towards National Origin and Language Minority students in the Palm Beach County School System violated the terms of the 1990 ESOL Agreement and state and federal Law and regulations.

The ESOL Agreement requires the Department to establish procedures for handling complaints from interested persons or organizations alleging violations by a school district and the Department must also investigate the allegations and issue a report of findings.

The letter of complaint made specific allegations that practices by Palm Beach County School Board (PBCSB) conflict with the terms of 1990 ESOL Agreement as follows:

1. The school district has issued correspondence to students and parents requiring Social Security numbers as a condition of school enrollment/ attendance.

2. The school district has developed and issued a Home Language Survey requiring Alien Registration numbers.

3. The school district maintains segregated school at Boca Raton High, where ESOL students are assigned classes/portables, which are located outside the fence of the main campus.

METHODOLOGY

•The complaint against Palm Beach County School Board was assigned on July 18, 1991.

•A letter was issued on July 19, 1991 notifying the District Superintendent of Division of Public Schools plans to conduct an on -site review on July 30, 1991.

•Telephone contact was initiated with Florida Rural Legal Services and meetings scheduled for July 29, 1991.

•Telephone contact was attempted with Parent Leadership Council Representatives who signed the District LEP plan, but were not successful.

•Also prior to the assignment of the complaint to Bureau of Compensatory Education, Mr. Syd Mckenzie, III, General Counsel, issued a response to Florida Rural Legal Services and by copy of the response notified the School Board of Palm Beach County of the impending on-site review.

•A questionnaire was designed to assist in verifying the status of the allegations during the on-site visit. (see attached)

•On-site Interviews were conducted with FRLS and PBCSB personnel, students, parents and other interested persons.

ISSUE I

Whether students are required to have a Social Security Number:

FINDING

The language of the correspondence issued by several Principals in the district and on the Home Language Survey goes beyond the requirements of Section 229.559, F.S., which provides that the districts shall request this information. This practice also violates Plyer v. Doe, 457 U.S. 202.(1982).

Further, during the on-site review there was no evidence or documentation to rescend previous correspondence issued by the district to clarify State requirements as specified in the DPS 91-267 memorandum.

However, the Home Language Survey has been revised for 1991-92 school year and the request for Social Security number has been deleted.

CORRECTIVE ACTION

In addition to the revision of the Home Language Survey, Palm Beach County School Board should issue a directive to all administrative personnel and Principals clarifying the Social Security Number issue as requested by DPS memorandum 91-267. Further this issue should continue to be monitored on a school by school basis by administrative personnel.

ISSUE II

Whether students are required/requested to provide Alien Registration Numbers:

FINDING

The 1990-91 Home Language Survey has an entry which requests Alien Registration numbers. This is a violation of Plyer v. DOE, 457 U.S. 202 (1982). However, the district is reporting that it has not compiled any list of students by Alien Registration data: names, numbers, or other but has submitted a tape of its total student population to the State for SLIAG funding consideration.

CORRECTIVE ACTION

The district has been instructed to discontinue this practice and should destroy or blacken documents which some students have entered Alien Registration numbers. The Home Language Survey for 1991-92 has been revised and has no entry for Alien Registration data; the use of the revised form will be confirmed during the follow-up review to be conducted by Department personnel.

ISSUE III

Whether ESOL students are segregated in portables behind the fence at Boca Raton High:

FINDING

There are five portables at Boca Raton located behind the main fence unlike that of the other portables (see photographs). These portables house 100% of the ESOL Language Arts and Basic Subject Areas Classes. ESOL students also attend Physical Education together. ESOL Students attend lunch in the cafeteria. Such a positioning of the portables, in effect, has segregated LEP students and Non LEP students and violates federal and state law regulations including the federal Equal Educational Act [20 U.S.C. 170 3(f)], Title VI of the federal Civil Rights Act of 1964, the Florida Educational Equity Act, Section 233.058, F.S., and State Board of Education Rules 6A-6.0904 and 6A-6.0905.

CORRECTIVE ACTION

The segregation of LEP students in portable classroom will be discontinued. The 1991-92 plans for classroom space have the ESOL classes removed from the portables and placed into the main facility by subject areas and the portables have been designated for the Social Studies Department . This issue should be monitored to ensure proper classroom space and facilities which are comparable and provide ESOL students equal access to the main campus of Boca Raton High.

OTHER

- The District personnel indicated that Florida Rural Legal Services made no attempt to contact them to resolve the complaint.

- The Department of Education should conduct a second on-site visit to determine implementation of the corrective actions for the three (3) allegations made by Florida Rural Legal Services.

- The follow-up review should take place between October 1, and November 30, 1991.

CONCLUSION AND RECOMMENDATIONS

Palm Beach County School Board practices related to the three (3) charges/allegations made by Florida Rural Legal Services violate federal and state law and regulations, including the federal Equal Educational Opportunity Act [20 U.S.C. 170 3(f)], Title VI of the federal Civil Rights Act of 1964, the Florida Educational Equity Act, and Sections 233.058 and 229.559, F.S., State Board of Education Rules 6A-6.09004 and 6A-6.0908. Palm Beach County is reporting that the aforementioned corrective actions should be in compliance as it relates to the three (3) charges by the commencement of the 1991-92 school year.

ATTACHMENTS

(1) Documentation for charge number 1 regarding Social Security Numbers

(2) Documentation for charge number 2 regarding Alien Registration

(3) Documentation for charge number 3 regarding Portables at Boca Raton

(4) Documentation of District policies and procedures and plans for corrective action.

ISSUE I

DISTRICT COMPUTER SERVICES

THE SCHOOL BOARD
OF PALM BEACH COUNTY, FLORIDA

3980 RCA BOULEVARD, SUITE 8016
PALM BEACH GARDENS, FL 33410-4276

(407) 624-7415

THOMAS J. MILLS
SUPERINTENDENT
OF SCHOOLS

RECEIVED

JAN 29 1991

DEPARTMENT OF
ELEMENTARY EDUCATION

January 25, 1991

BULLETIN # P-7517-DS

Contact Person:
C.J. Bennett, DCS
640-5095 Golfview Tr

TO: All Principals

FROM: Henry R. Boekhoff, Associate Superintendent
Administration

SUBJECT: Social Security Numbers For All Students

Recent changes in Department of Education reporting guidelines require that we identity each student in the District by Social Security number so that records may be transmitted electronically. Therefore, we are requesting that you make every effort during student registration to obtain a Social Security number for each new student.

Attached please find a suggested draft letter (to be placed on your school stationery) to distribute to those parents who have not previously requested numbers for their children from the Social Security Administration.

Also attached is a list of school centers that have been designated as Satellite Centers. On the dates and times listed, a representative from the Social Security Administration will be present at these locations so that parents will not have to travel to one of the three permanent Social Security offices in West Palm, Belle Glade or Delray Beach.

Most students regardless of Country of National Origin are eligible to receive a number from the Social Security Administration. We strongly urge you to encourage parents to apply for Social Security numbers for their children upon entering kindergarten to facilitate record keeping and meet funding requirements.

Please be advised that despite our funding and transmittal requirements, we cannot by law, require parents to provide Social Security numbers for their children as a condition of registration.

HRB:RLL:CJB:mt

Attachments

To the Parent of:

RE: SOCIAL SECURITY NUMBERS FOR ALL STUDENTS

Our records indicate that currently we do not have a record on file of your child's Social Security number.

Recent changes in Department of Education guidelines require that we identify each student in the District by Social Security number so that records can be transmitted electronically. In this way, your child will maintain the same student identification number throughout school.

Because of Federal Income Tax regulations you may have already obtained a number for your child. If you have, please take a moment to check your files and complete the attached form so that we can complete your child's school records.

IF YOU DO NOT HAVE A SOCIAL SECURITY NUMBER FOR YOUR CHILD please obtain a form from our main office. Complete and return it directly to one of the Social Security Offices or for your convenience after working hours, specified "Satellite" schools will have a Social Security Representative on campus at the times indicated on the schedule also available in our main office.

Thank you for your cooperation in this matter.

Sincerely,

Principal

SOCIAL SECURITY NUMBER - SCHOOL RECORD UPDATE

_____

FIRST MI LAST

STUDENT'S SOCIAL SECURITY NUMBER _____ _____ _____

PARENTAL SIGNATURE_____

INTERVIEW FORM

NAME _____

ADDRESS _____

REPRESENTING _____

WHAT DO YOU KNOW ABOUT

1. STUDENTS REQUEST FOR SS#?

2. STUDENT REQUEST FOR ALIEN REGISTRATION? # P

3. PORTABLES AT BOCA RATON HIGH SCHOOL?

4. OTHER ESOL RELATED CONCERNS

Interview Questions
WPB Complaint
Boca Raton High School

1. Whether students are required to have social security numbers

   - Has State clarification been issued to schools?

     yes_____ no_____

_____

_____

_____

_____

_____

Has previous form and memorandum been updated and sent home?

yes_____ no_____

_____

_____

_____

2. Whether students are required/requested to provide Alien Registration Number?

Has HLS been revised to delete reference to alien registration number?

yes_____ no_____

_____

_____

_____

   - Has district compiled list of students by alien registration data: names, number, other identifying

     yes_____ no_____

_____

_____

_____

SYDNEY H. McKENZIE, III
GENERAL COUNSEL

BARBARA J. STAROS
DEPUTY GENERAL COUNSEL

CAROLYN S. HOLIFIELD
COUNSEL

CHARLE R. RUBERG
COUNSEL

CARL J. ZAHNER
COUNSEL

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FLORIDA BOARD OF EDUCATION
OFFICE OF THE GENERAL COUNSEL
FLORIDA EDUCATION CENTER
TALLAHASSEE, FLORIDA 32399-0400
TELEPHONE (904) 488-7707

May 28, 1991

Ms. Christine Correia
Florida Rural Legal Services, Inc.
5700 Lake Worth Road
Suite 212
Lake Worth, Florida 33463

Re: Complaint Under LULAC, et al. v. Florida Board of Education, et al.

Dear Ms. Correia:

This is in response to your letter dated May 10, 1991, indicating certain concerns with actions taken by the Palm Beach County School District which you feel are contrary to provisions of the Agreement between the Florida Department of Education and various parties in LULAC, et al. v. Florida Board of Education, et al. I have reviewed the issues raised and I will address them in the order in which you raised them.

Your first complaint relates to the question of use of Social Security Numbers. Florida has determined by state law that districts shall request the Social Security Number from each student enrolling in a Florida public school beginning with the 1990-91 school year. The Legislature has determined to use the Social Security Number as the Florida Student Number Identification beginning with the 1991-92 school year. Since this number will ultimately be the basis for transfer of state information between districts and between secondary and post-secondary institutions in the state, it will be advantageous for students matriculating in the Florida system to have such a number.

Nevertheless, due to prior complaints and on the basis of discussions with Camilo Perez-Bustillo of META, Inc., a notice has been sent to all districts which met with the agreement of

Affirmative action/equal opportunity employer

META. A copy of that notice is enclosed. It is my understanding from discussions with the Palm Beach County School Districts that they now follow the requirements of that memorandum and have done so for some time. We will, however, confirm this further.

Your second issue relates to the request of alien registration numbers on home survey forms by the Palm Beach County School District, I concur in your concern and, in fact, have previously written an opinion indicating that this practice is improper . A copy of that opinion is enclosed. I have orally notified the attorney from the Palm Beach County School District of the opinion and am in the process of notifying her in writing.

As to your final issue, regarding segregated facilities, the Department is in the process of reviewing this situation through on-site review and will let you know the results of our examination.

Thank you for calling these matters to our attention.

Sincerely,

Sydney H. McKenzie, III
General Counsel

HM/ep

Enclosure

cc: Stefan Rosenzweig
Legal Services of the Florida Keys

Camilo Perez-Bustillo
META, Inc.

Abbey G. Hairston
General Counsel
School Board of Palm Beach County

APR 15 '91

FLORIDA DEPARTMENT OF EDUCATION

Betty Castor
Commissioner of Education

Walter J. McCarroll
Deputy Commissioner for
Educational Programs

April 12, 1991

Contact Person

Name: Bob Friedman
Phone: (904) 487-2280
SunCom: 277-2280
DPS: 91-267

M E M O R A N D U M

TO: District School Superintendents

FROM: Walter J. McCarroll, Deputy Commissioner

SUBJECT: Student Social Security Numbers

As provided in Section 229.559, Florida Statutes, school district personnel shall request the Social Security Number from each student enrolling in a Florida public school beginning with the 1990-91 school year. This requirement is part of the statewide effort to phase-in the use of the Social Security Number as the Florida Student Number Identifier beginning with the 1991-92 school year.

The Department of Education has received several complaints on how the verbal requests or written requests for Social Security Numbers are being made by some schools. The implications are that parents and students are being told or have received written notice either implying or stating that a Social Security Number is a requirement and that there are penalties envolved if the student and parent do not comply. Please make each of your schools aware that Section 229.559, Florida Statutes, requires the school to request but specfically states ".... a student shall not be required to provide his Social Security Number ..." If a school or schools in your district has been following an incorrect procedure please ask them to discontinue the incorrect procedure and institute a procedure that complies with the law.

In requesting the Social Security Number from parents, school districts should make such requests in the parent's home language unless clearly not feasible as required by Rule 6A-6.0908(2), FAC.

Although collection of the Social Security Number from as many students as possible will greatly facilitate the effectiveness of state and local information systems, and will assist the student in having his or her records transferred promptly when moving between school districts, the providing of the Social Security Number by the parent or student is strictly voluntary.

In the event that a Social Security Number is not submitted by the student or parent, the state procedure for assigning an alternate ten digit number will fulfill the requirement that each student have a Florida Student Number Identifier. DPS Memorandum 91-225, dated February 25, 1991, describes the state procedure to be used in assigning Florida Student Number Identifiers.

Questions pertaining to either the Social Security Number or the Florida Student Number Identifier should be addressed to MIS Section staff at (904) 487-2280 or SunCom 277-2280.

WJM:bfk

cc: District MIS Contacts
Student Services Directors
District ESOL Contacts

CENTRALIZED REGISTRATION

DEFINITION AND BACKGROUND

The term *Centralized Registration* refers to the process of registering and assessing students at one location, regardless of the size of the district. Most school districts established these procedures solely for the purpose of registering and assessing "Foreign" students and/or students answering 'yes' to the required Home Language Survey. These procedures have presented a barrier for many parents/students, especially in large districts. In some cases, the use of central registration/assessment offices has resulted in the denial of access to equal educational opportunities for some students whose parents are unable to travel to the the required registration center. The use of centralized registration provides for the opportunity to violate the requirements of the Equal Educational Opportunities Act of 1974, the Civil Rights Act of 1964; Office of Civil Rights Memorandum: May 25, 1970, and The Florida Equity Act of 1984.

GUIDELINES

The process of centralized registration may only be implemented when:

- the central registration procedures are not only required of *foreign* and *Lep* students and when transportation or local/home school registration is offered to parents/students unable to get to central office.

- the registration procedures allow access to all of the educational services offered by the school district without creating unnecessary delays and barriers.

Please refer questions, comments or requests for more information to Ms. Clenteria G. Knight or Ms. Lisa C. Gale at (904) 487-8533; Florida Department of Education, 754 Florida Education Center, Tallahassee, Florida 32399-0400.

"This manual is an extraordinarily valuable reference on the right of access of immigrant children to public schools. It provides an excellent overview of the law in a unique and extremely useful manner. I recommend it very highly to all educators, advocates, and attorneys."

Deborah Anker
Harvard Law School

"Every educator, advocate, and school lawyer should rely on this manual for guidance. It is a valuable resource on issues and practices involving the *Plyler* right of access for undocumented and documented immigrant students. It addresses prohibited and recommended school practices in a clear and concise manner."

Justice Cruz Reynoso (Ret.)

A publication of
The National Center for Immigrant Students
National Coalition of Advocates for Students
100 Boylston Street
Suite 737
Boston, MA 02116-4610
(617) 357-8507

John Willshire Carrera, Legal Consultant

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